

# Exhibit FFF

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09:28:25 1 Judge Kennelly, December 8, 2016, 9:30 call and trial.

09:41:14 2 THE CLERK: Case number 10 C 1168, Fields v. City of  
09:41:20 3 Chicago.

09:41:21 4 MR. LOEVY: Good morning, your Honor. Jon Loevy,  
09:41:24 5 Anand Swaminathan, Steve Art, Candace Gorman for our client  
09:41:30 6 Nate Fields.

09:41:31 7 MR. NOLAND: Dan Noland, Terry Burns, and Paul  
09:41:39 8 Michalik for the City and Mr. Murphy.

09:41:39 9 MR. KULWIN: Shelly Kulwin and Rachel Katz on behalf  
09:41:43 10 of Dave O'Callaghan.

09:41:45 11 THE COURT: All right. Anything before we start?

09:41:46 12 MR. LOEVY: Your Honor, we thought we began our  
09:41:48 13 cross-examination after the defense was done with this  
09:41:51 14 witness. Mr. Kulwin has indicated that he has questions too.  
09:41:53 15 Our only point, your Honor, is that Mr. Noland has elicited  
09:41:56 16 everything that was permissible under Rule 26 and that any  
09:42:03 17 questioning on the policies and practices at this point would  
09:42:06 18 be cumulative is our position, your Honor.

09:42:09 19 THE COURT: Hang on one second. I want to pull  
09:42:11 20 something up here. So when I asked you yesterday whether you  
09:43:12 21 had any questions and you said no, that was wrong I take it?  
09:43:15 22 I asked you that at 3:16 p.m.

09:43:17 23 MR. KULWIN: At 3:16 p.m. I had no questions.

09:43:20 24 THE COURT: You are not in your direct at this point.  
09:43:22 25 He is in his cross.

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09:43:25 1 MR. KULWIN: I am not asking to ask questions now.

09:43:27 2 MR. LOEVY: I am --

09:43:28 3 MR. KULWIN: I am not asking to ask questions now.

09:43:31 4 THE COURT: All right. I assume you're going to do

09:43:38 5 redirect first.

09:43:40 6 MR. NOLAND: Yes.

09:43:40 7 THE COURT: And then if you have something that

09:43:42 8 hasn't been covered, ask me for a sidebar.

09:43:45 9 MR. KULWIN: I will.

09:43:45 10 THE COURT: Fair enough.

09:43:46 11 MR. LOEVY: Thank you.

09:43:47 12 THE COURT: All right. Let's get the jury and we can

09:43:50 13 get the witness back on the stand. We are still missing a

09:44:17 14 juror. They called in. They are on the red line.

09:44:25 15 (Short break.)

09:56:17 16 (The jury enters the courtroom.)

09:56:17 17 THE COURT: Everybody can have a seat. We are ready

09:56:20 18 to proceed with Mr. Murray's testimony. You remember you are

09:56:23 19 still under oath?

09:56:24 20 THE WITNESS: Yes.

09:56:24 21 - - -

09:56:24 22 BERNARD MURRAY, CROSS-EXAMINATION CONTINUED

09:56:24 23 BY MR. LOEVY:

09:56:26 24 Q. Good morning, Mr. Murray.

09:56:30 25 What was missing from the criminal defense files in

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09:56:32 1 your view was not a good proxy for what was missing generally,  
09:56:36 2 right  
09:56:36 3 A. For various reasons, yes.  
09:56:39 4 Q. But isn't it true that in a lot of cases, the exact same  
09:56:43 5 documents that were missing from the criminal defense files  
09:56:45 6 were also missing from the state's attorney's files?  
09:56:49 7 A. Well, a high percentage of the documents were found in the  
09:56:53 8 prosecutor's files.  
09:56:54 9 Q. For example, in people v. Christophino Garcia (phonetic),  
09:56:58 10 according to your report, 5 one of the missing pages were  
09:57:03 11 missing from the state's attorney's file and 54 were missing  
09:57:06 12 from the criminal defense file, correct?  
09:57:07 13 A.  
09:57:13 14 MR. NOLAND: Where is that?  
09:57:14 15 BY MR. LOEVY:  
09:57:15 16 Q. Paragraph 8, sir, on page 26?  
09:57:18 17 A. That's correct.  
09:57:18 18 Q. Basically, the same 50 or so missing pages were missing  
09:57:22 19 from both files, right?  
09:57:23 20 A. On that file, yes.  
09:57:26 21 Q. All right. And looking at people v. Derrick Johnson this  
09:57:31 22 is paragraph 15 on 41, it looks like 19 pages from missing  
09:57:36 23 from the state's attorney's file and those same 19 were  
09:57:38 24 missing from the criminal defense file with two more missing  
09:57:42 25 from the criminal defense file?

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09:57:43 1 A. Right, but other information indicated that the  
09:57:45 2 prosecutors provided the complete investigative file.

09:57:48 3 MR. LOEVY: Your Honor, we'd move to strike  
09:57:50 4 everything.

09:57:50 5 THE COURT: Stricken as none responsive.

09:57:56 6 BY MR. LOEVY:

09:57:56 7 Q. In people v. Devon Terrell, there were 24 missing pages in  
09:58:00 8 the criminal defense file and those same 24 were missing from  
09:58:03 9 the prosecutor, correct?

09:58:04 10 A. I'm sorry. What file?

09:58:05 11 Q. It's page 55. This is Devon Terrell.

09:58:13 12 A. 25 pages.

09:58:21 13 Q. 25 missing from the criminal defense attorney, 24 of those  
09:58:26 14 missing from the state's attorney, right?

09:58:27 15 A. That's correct.

09:58:27 16 Q. The same 24 missing pages, right?

09:58:30 17 A. The -- yeah, the 25, yes, the 25 pages were alleged  
09:58:36 18 missing from the defense file were not found in the  
09:58:38 19 prosecutor's file, 24 of the 25.

09:58:40 20 Q. So the issue in that particular case was not an issue with  
09:58:43 21 the criminal defense files because the state's attorney had  
09:58:46 22 the same issue, right?

09:58:47 23 A. That the pages were missing?

09:58:52 24 Q. Yes.

09:58:53 25 A. But then what are the pages?

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09:58:56 1 MR. LOEVY: Your Honor, we move to strike but then  
09:58:59 2 what are the pages?  
09:59:00 3 THE COURT: The last part of the answer is stricken,  
09:59:02 4 it's not responsive.  
09:59:04 5 BY MR. LOEVY:  
09:59:04 6 Q. You can see the stacks here in front of your witness box.  
09:59:08 7 Those are missing pages?  
09:59:09 8 A. Yes.  
09:59:09 9 Q. From various files.  
09:59:10 10 Now, that's only 30 missing from 30 of the 400 some  
09:59:16 11 files in the sample, correct?  
09:59:17 12 A. 31.  
09:59:18 13 Q. This is represents what's missing from approximately how  
09:59:21 14 many files are we talking about?  
09:59:22 15 A. 44.  
09:59:23 16 Q. I thought?  
09:59:24 17 A. I'm sorry, 43.  
09:59:26 18 Q. How many state's attorney's files were found?  
09:59:32 19 A. 43.  
09:59:33 20 Q. It's about 10 percent from the missing sample?  
09:59:35 21 A. I don't understand the question.  
09:59:36 22 Q. In other words, you are talking about the pages missing  
09:59:39 23 from 40 files, but there were actually 460-some files pulled?  
09:59:45 24 MR. NOLAND: Objection, your Honor.  
09:59:48 25 MR. LOEVY: I will withdraw it.

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09:59:49 1 BY MR. LOEVY:

09:59:49 2 Q. What was the exact number of the total?

09:59:51 3 A. 457 files.

09:59:53 4 Q. All right. That 457 represented all the files from three  
09:59:57 5 years before and three years after each of Mr. Fields' files?

10:00:01 6 A. I don't know what year it represents, but those were the  
10:00:04 7 files that were being examined.

10:00:05 8 Q. Of those 450 some files the state's attorney was only able  
10:00:09 9 to find corresponding files and the criminal defense attorneys  
10:00:13 10 only found corresponding files for about 40 you said?

10:00:16 11 MR. NOLAND: Objection, Judge, foundation and  
10:00:18 12 mischaracterizing.

10:00:19 13 MR. LOEVY: It's a question, your Honor.

10:00:20 14 THE COURT: It's a question. The objection is  
10:00:22 15 overruled. Go ahead.

10:00:24 16 THE WITNESS: The 457 files were not what was alleged  
10:00:28 17 today have missing pages.

10:00:30 18 BY MR. LOEVY:

10:00:30 19 Q. Right. The 457 files were the files in the basement?

10:00:34 20 A. I don't know where they were stored, but the 457 files  
10:00:38 21 were not what was allege today have missing pages.

10:00:40 22 Q. I guess the only point is the missing pages from the 457  
10:00:44 23 files is not just what's on the floor. That's only a small  
10:00:47 24 fraction of the missing pages, correct?

10:00:49 25 MR. NOLAND: Objection, Judge. Foundation.

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10:00:51 1 THE COURT: Sustained.

10:00:52 2 BY MR. LOEVY:

10:00:55 3 Q. All right. If the Chicago Police Department produced the  
10:01:01 4 files at issue, they would have produced them with this cover  
10:01:04 5 page.

10:01:04 6 MR. LOEVY: Your Honor, if we could have the ELMO,  
10:01:07 7 this is Plaintiff's Exhibit 1-57.

10:01:09 8 THE COURT: There you go.

10:01:10 9 BY MR. LOEVY:

10:01:11 10 Q. Was it your experience, sir, that when the police  
10:01:13 11 department produced the file, they also produced the  
10:01:16 12 identifying cover page?

10:01:17 13 A. That was not my experience.

10:01:19 14 Q. Was it your experience that if the Chicago Police  
10:01:22 15 Department produced the file, they did not, they did not  
10:01:25 16 produce where the file -- where the documents came from?

10:01:27 17 A. No, they did not -- it was not my experience that the  
10:01:32 18 cover of the file was produced, no.

10:01:34 19 Q. So they would just give you documents, you couldn't tell  
10:01:37 20 where they came from?

10:01:38 21 A. No, they were responding to a subpoena I sent and the  
10:01:42 22 documents would be xeroxed out of the file itself.

10:01:45 23 Q. This is the Smith/Hickman, it says cleared and closed for  
10:01:49 24 homicide data sheets. However, debt supp clearing and closing  
10:01:53 25 the case is missing from this file. Do you see that?

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10:01:55 1 A. I see that.

10:01:56 2 Q. That's the kind of information that should be disclosed to  
10:01:59 3 the criminal defendant, isn't it?

10:02:00 4 A.

10:02:02 5 MR. NOLAND: Objection, vague.

10:02:03 6 THE COURT: Overruled.

10:02:04 7 THE WITNESS: Well, it's not investigative material  
10:02:09 8 per se. It's indicating that the file doesn't have all the  
10:02:13 9 documents in it.

10:02:14 10 BY MR. LOEVY:

10:02:15 11 Q. Sir, when up use this term investigative, the requirement  
10:02:18 12 under Brady is exculpatory, right if?

10:02:19 13 THE COURT: Can I see the lawyers at sidebar, please.  
10:02:22 14 I want to highlight an issue.

10:02:26 15 (The following proceedings were had at sidebar outside the  
10:02:27 16 hearing of the jury:)

10:02:27 17 THE COURT: It's more to remind myself than anything  
10:02:30 18 else. So there were questions early in the direct where I did  
10:02:34 19 not sustain an objection about, you know, what Brady requires  
10:02:38 20 and what rule 412 requires and there was questions at the end  
10:02:41 21 of the direct where I did sustain an objection about him  
10:02:44 22 rendering an opinion about whether there was a compliance with  
10:02:48 23 Brady is that basically right?

10:02:49 24 MR. LOEVY: Yes.

10:02:50 25 THE COURT: And this part is directed towards the

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10:02:52 1 first part?

10:02:52 2 MR. LOEVY: Exactly.

10:02:57 3 THE COURT: All right.

10:02:59 4 (The following proceedings were had in open court in the  
10:02:59 5 presence and hearing of the jury:)

10:02:59 6 THE COURT: My fault. You can proceed, Mr. Loevy.

10:03:01 7 BY MR. LOEVY:

10:03:01 8 Q. You discussed on the direct Brady v. Maryland, the Supreme  
10:03:05 9 Court Rules, right?

10:03:06 10 A. Yes.

10:03:06 11 Q. There is no requirement in that about it has to be  
10:03:08 12 investigative versus administrative, right?

10:03:11 13 A. No, but it -- no.

10:03:13 14 Q. There is to administrative exception to exculpatory,  
10:03:18 15 right?

10:03:19 16 A. No.

10:03:19 17 Q. If an administrative document is exculpatory, then it  
10:03:22 18 counts just as much as an investigative document that's  
10:03:26 19 exculpatory, correct?

10:03:27 20 A. If there's some relevance to being exculpatory, yes.

10:03:31 21 Q. Yeah. So this distinction between investigative and  
10:03:36 22 administrative is not recognized in the Brady case law you  
10:03:43 23 talked about or the Supreme Court Rules, right?

10:03:46 24 A. I have not studied the Brady case law with administrative  
10:03:50 25 documents. I don't know if I can say that.

10:03:51 1 Q. What you can say is Brady and the rules require is  
10:03:54 2 anything that's potentially exculpatory, whether it's  
10:03:56 3 administrative, investigative, photographic, or anything else  
10:03:59 4 has to be turned over, right?

10:04:00 5 A. Brady deals with exculpatory material, yes.

10:04:03 6 Q. All right. You talked about the files, how you found some  
10:04:11 7 of the files had documents that you felt were misfiled because  
10:04:14 8 they had different RD numbers. Do you remember that?

10:04:16 9 A. Correct.

10:04:16 10 Q. Even if they have different RD numbers, they can still be  
10:04:20 11 exculpatory, correct?

10:04:20 12 A. Theoretically, I guess they could be, yes.

10:04:24 13 Q. All right. Let's show you an example from the  
10:04:26 14 Smith/Hickman file. This is Plaintiff's Exhibit 1-118 through  
10:04:30 15 120. You're now more familiar with the Smith/Hickman  
10:04:33 16 investigation, correct?

10:04:34 17 A. I reviewed the documents you handed to me yesterday.

10:04:37 18 Q. All right. This is a document in the street file, the  
10:04:41 19 investigative file with a different RD number dealing with a  
10:04:44 20 shooting that happened the previous night before Mr. Fuddy  
10:04:51 21 Smith was murdered. It details.

10:04:53 22 MR. LOEVY: Your Honor, are we still on the ELMO?

10:04:57 23 THE COURT: Yes.

10:04:57 24 BY MR. LOEVY:

10:04:58 25 Q. It details a shooting with Paul Hailey where Goon Squad

10:05:02 1 were getting into it with other guys and that was the end of  
10:05:07 2 it. Do you remember reading that?  
10:05:08 3 A. I don't remember the names, but I remember the reference  
10:05:10 4 to a shooting.  
10:05:11 5 Q. Here is an example of a document, totally different RD  
10:05:15 6 number, it's in the street file, but it could be potentially  
10:05:18 7 exculpatory, correct?  
10:05:19 8 A. Potentially.  
10:05:20 9 Q. That doesn't mean this is misfiled just because it has a  
10:05:23 10 different RD number, right?  
10:05:24 11 A. In this instance, no, it does not mean that.  
10:05:27 12 Q. In fact, detectives would typically put leads from  
10:05:31 13 different cases into the investigative files because the  
10:05:34 14 investigation might go in that direction, right?  
10:05:36 15 A. I am not exactly sure what they typically do, but if there  
10:05:40 16 was information that was relevant to the investigation, it  
10:05:43 17 would be included in the investigative file.  
10:05:46 18 Q. But you can't say just because it has a different RD  
10:05:49 19 number, it's not exculpatory, right, that's true?  
10:05:51 20 A. No, you have to examine it and see what it is.  
10:05:54 21 Q. Here's another document with a different RD number in the  
10:05:57 22 Smith/Hickman street file. This is Plaintiff's Exhibit 1-82,  
10:06:02 23 different RD number, some guy gets arrested for cocaine I  
10:06:06 24 think it is, narcotics arrest and then they are talking about  
10:06:11 25 the fact that the guy is driving a light blue Cadillac, do you

10:06:17 1 see it?

10:06:17 2 A. I see it.

10:06:18 3 Q. Isn't it true that different documents with a different RD  
10:06:22 4 could lead to different investigative leads that a defendant  
10:06:26 5 could pursue?

10:06:27 6 A. Right.

10:06:27 7 Q. You wouldn't want to say that documents that had a  
10:06:30 8 different RD number need to be in the not relevant pile per  
10:06:34 9 se?

10:06:34 10 A. You need to examine them to determine if there's any  
10:06:37 11 relevance to the rest of the file.

10:06:38 12 Q. You, by the way, did not master all 99,000 of the pages,  
10:06:43 13 right?

10:06:43 14 A. No.

10:06:44 15 Q. In fact, you read, what did you say, like 500 of the  
10:06:48 16 99,000?

10:06:48 17 A. Well, maybe 500. I reviewed pages, then other pages I  
10:06:53 18 read more carefully, yes.

10:06:54 19 Q. But you maybe reviewed about 10 percent of the 99,000 and  
10:06:59 20 probably read something closer to 500 pages, right?

10:07:02 21 A. Those are rough estimates.

10:07:04 22 Q. So you're not claiming that you are totally versed in all  
10:07:07 23 of these cases if you only read that small of a percentage,  
10:07:10 24 right?

10:07:10 25 A. I didn't have to read all the pages to be familiar with

10:07:13 1 the facts of the file.

10:07:14 2 Q. But it might have been lost on you why a different RD  
10:07:18 3 number was potentially exculpatory not misfiled, you don't  
10:07:24 4 claim to have a comprehensive understanding of all the files?

10:07:27 5 MR. NOLAND: Objection, vague.

10:07:29 6 THE COURT: Overruled.

10:07:33 7 THE WITNESS: I think I have an understanding of the  
10:07:35 8 pages that were missing in an examination of the relevance to  
10:07:41 9 the file. I would say that.

10:07:42 10 BY MR. LOEVY:

10:07:43 11 Q. Now, you said that in a lot of cases even if there was  
10:07:46 12 investigatory materials in the street files that didn't make  
10:07:50 13 it into the official reports, at least the names were in the  
10:07:54 14 official reports, right, that was one of your testimonies?

10:07:56 15 A. The names and other identifying information, the  
10:07:59 16 relevance.

10:07:59 17 Q. Right. Now, showing you Plaintiff's Exhibit 1-104, here  
10:08:03 18 is an example of a James Langston. You saw his name in the  
10:08:06 19 official documents last night, right?

10:08:08 20 A. Yes.

10:08:08 21 Q. All right. But it didn't say in the official documents  
10:08:12 22 that he had seen the drivers of the car that shot Fuddy and it  
10:08:15 23 was a Baldwin, did it?

10:08:16 24 A. I'd have to review the file again, but I don't recall  
10:08:19 25 that.

10:08:20 1 Q. All right. So just having the name in the official file  
10:08:23 2 is not sufficient, is it?

10:08:24 3 A. Well, the name and information of his relevance to the  
10:08:30 4 case is important.

10:08:30 5 Q. But there were other examples in the other street files  
10:08:35 6 where there would be a name in the official file but more  
10:08:37 7 information in the investigative file is that true?

10:08:40 8 A. The information in the -- no. That's not true.

10:08:44 9 Q. So what I just showed you is just atypical, there's no  
10:08:48 10 other example of this anywhere?

10:08:50 11 A. I wouldn't say it's atypical, but it's not accurate.

10:08:52 12 Q. I just showed you an example of a situation where there is  
10:08:55 13 a name in the official file, James Langston, but what's  
10:08:58 14 withheld from the official file is it that he actually saw the  
10:09:01 15 killer and it was someone other than the defendant, that's  
10:09:03 16 what this example shows, right?

10:09:04 17 A. Well, first off, I don't know if it's withheld from the  
10:09:07 18 official file, but there's different information associated  
10:09:10 19 with Mr. Langston in the permanent record.

10:09:12 20 Q. That's what I mean by withheld. It wasn't in the  
10:09:15 21 permanent record an it is in the street file, and I'm asking  
10:09:20 22 you, is this the only example you have seen in all this or are  
10:09:23 23 there other examples in similar scenarios like that?

10:09:26 24 A. The examples I saw were if the information was in a  
10:09:30 25 general progress report, there would be more information about

10:09:33 1 that person typed into the supplemental report, supplementary  
10:09:38 2 reports as well.

10:09:38 3 Q. You showed us some examples where there were blue backs  
10:09:41 4 that reflected a street file received?

10:09:43 5 A. Received and then tendered, yes.

10:09:45 6 Q. But all of the blue backs did not say street files  
10:09:50 7 received and tendered?

10:09:50 8 A. No.

10:09:51 9 Q. Can we infer on the ones where it didn't say that that the  
10:09:55 10 street files were withheld?

10:09:56 11 A. No, you can't.

10:09:57 12 Q. You were asked about photographs. And I believe I  
10:10:01 13 understand your testimony to be that the criminal defendants  
10:10:04 14 would have known they're photographs and would have got the  
10:10:07 15 photographs, right?

10:10:07 16 A. Yes.

10:10:08 17 Q. And there are some examples, though, where some  
10:10:11 18 photographs were turned over but not all the photographs,  
10:10:14 19 correct?

10:10:14 20 A. I am not sure -- there were some where the photographs  
10:10:20 21 were not found in the prosecutor's file.

10:10:22 22 Q. All right. So, for example, people v. Mervin white, there  
10:10:26 23 was a be big stack of photographs turned over, right, in the  
10:10:29 24 prosecutor's file?

10:10:30 25 A. Yes.



10:10:30 1 Q. And both the prosecutor and the criminal defense attorneys  
10:10:34 2 would have assumed these were the photographs, right?

10:10:36 3 A. Can you tell me what case Mr. White is?

10:10:40 4 Q. Mervin white, it's page 75 of your report. Here are the  
10:10:44 5 photographs. It turned out, sir, there were a half dozen  
10:11:17 6 photographs that weren't turned over to the state's attorney,  
10:11:19 7 correct?

10:11:19 8 A. Five Polaroid photographs from the crime scene.

10:11:22 9 Q. And none of us know enough about the facts to know if some  
10:11:25 10 of those Polaroids might have affected the fact pattern,  
10:11:29 11 right?

10:11:29 12 A. Well, I know enough from reviewing the file to tell you  
10:11:36 13 what the photographs are related to.

10:11:37 14 Q. I mean, maybe the criminal defense attorney could tell you  
10:11:40 15 that this shows that the lamp wasn't knocked over, I mean, you  
10:11:43 16 don't know enough to know all the details, right?

10:11:46 17 MR. KULWIN: Objection, argumentative.

10:11:47 18 MR. LOEVY: I will withdraw the question.

10:11:50 19 THE COURT: Okay.

10:11:50 20 BY MR. LOEVY:

10:11:51 21 Q. At a minimum, though, the fact that some photos got turned  
10:11:54 22 over doesn't mean that the criminal defense attorney would  
10:11:56 23 have known that all the photographs weren't turned over,  
10:11:58 24 right?

10:11:58 25 A. The -- first off, I don't know if those photographs were

10:12:09 1 not turned over. They very possibly could have been. We are  
10:12:13 2 dealing with a file that's probably 30 years old, so you're  
10:12:16 3 assuming that the trial file -- that the criminal defense  
10:12:20 4 attorney trial file now is reflective of the way it looked 30  
10:12:24 5 years ago.

10:12:24 6 Q. What I'm saying is these Polaroids are not in the  
10:12:27 7 prosecutor's file either, right?

10:12:29 8 A. The prosecutors' file could be incomplete after 30 years  
10:12:33 9 as well.

10:12:33 10 THE COURT: The answer is not responsive. Please  
10:12:36 11 answer the question.

10:12:38 12 BY MR. LOEVY:

10:12:39 13 Q. The Polaroids were not in the prosecutor's file, right?

10:12:41 14 A. We did not find copies of them in the prosecutor's file.

10:12:44 15 Q. And they weren't in the criminal defense attorney's file?

10:12:47 16 A. That's true.

10:12:48 17 Q. They were in the street file, right?

10:12:49 18 A. They were in the investigative file.

10:12:51 19 Q. That would be some evidence that the investigative file  
10:12:54 20 wasn't turned over to the prosecutor, right?

10:12:58 21 A. I don't think it's some evidence of that, no.

10:12:59 22 Q. All right. Photo arrays are supposed to be documented,  
10:13:02 23 correct, if a witness is shown a photo array?

10:13:04 24 A. Yeah, use the identification process, yes.

10:13:08 25 Q. Tell the jury what you're supposed to do if you do it by

10:13:11 1 the book?

10:13:11 2 A. If you show a photo array to a witness, you're supposed to  
10:13:15 3 indicate the names of the people and you are supposed to keep  
10:13:22 4 a copy of the photographs and include it in a supplementary  
10:13:26 5 report.

10:13:26 6 Q. Was it your experience that the Chicago police officers  
10:13:28 7 followed that practice?

10:13:29 8 A. I would say they followed it for the most part, yes.

10:13:32 9 Q. All right. In your career, do you remember a situation  
10:13:40 10 where an official Chicago police report disappeared or went  
10:13:44 11 missing, the actual one with the signature and the original?

10:13:47 12 A. Supplementary report?

10:13:49 13 Q. Yeah.

10:13:50 14 A. Something like that? I never had that experience.

10:13:52 15 Q. And how about all the people you supervised, did it ever  
10:13:54 16 come to your attention that an official document from records  
10:13:58 17 division with the signature on it had disappeared?

10:14:00 18 A. No.

10:14:01 19 Q. All right. Let's talk about the inventory to the files.  
10:14:09 20 Do you remember. If I understand your testimony, it is that  
10:14:13 21 usually those did not get turned over, the inventories?

10:14:16 22 A. Maybe half the time I received them.

10:14:19 23 Q. All right. So it was not atypical that the police  
10:14:22 24 department would not make those available, correct?

10:14:24 25 A. That's correct.

10:14:24 1 Q. And Mr. Brasfield's numbers were 15 percent of the  
10:14:29 2 permanent retention files had inventories, do you dispute that  
10:14:33 3 number?

10:14:33 4 A. 15 percent of the 59 files.

10:14:38 5 Q. 15 percent of the permanent retention file corresponding  
10:14:41 6 to the 59 files that had only 15 percent had inventories?

10:14:44 7 A. I didn't examine the permanent retention files. I  
10:14:47 8 examined the documents he claimed were missing from the  
10:14:52 9 investigative file.

10:14:52 10 Q. All right. Showing you a -- so you don't dispute  
10:14:55 11 Mr. Brasfield's number, 15 percent?

10:14:56 12 A. I have no ability to dispute it or not.

10:14:57 13 Q. All right. Showing you 83-1, the new special order  
10:15:03 14 specifically provided rules about the investigative file  
10:15:07 15 inventory sheet, correct?

10:15:08 16 A. I see that.

10:15:12 17 Q. It says it's supposed to be created and it becomes the  
10:15:16 18 case index for all documents in the file folder and it also  
10:15:20 19 says a copy of the form will be forwarded to the records  
10:15:24 20 division whenever felony charges are placed. Correct?

10:15:30 21 A. Yes.

10:15:30 22 Q. And the specific purpose is to ensure proper notice of all  
10:15:35 23 existing documents pertaining to the subject investigation can  
10:15:37 24 be made to the state's attorney's office, the courts, and the  
10:15:40 25 defense counsel, correct?

10:15:42 1 A. Yes, proper notice of all, yes.

10:15:44 2 Q. So although that's what it says on the books, you've  
10:15:47 3 already acknowledged that they weren't doing that as a matter  
10:15:49 4 of practice, correct?

10:15:50 5 A. Well, if I'm reading that correctly, it says that the  
10:15:54 6 police department is keeping that document so they can ensure  
10:15:57 7 proper notice of all existing documents.

10:15:59 8 Q. Well, it's supposed to be forwarded to the records  
10:16:02 9 division, right?

10:16:03 10 A. Right.

10:16:03 11 Q. And then people sent subpoenas to the records division for  
10:16:08 12 all the documents related to the case, right, right?

10:16:10 13 A. Yes.

10:16:10 14 Q. And the inventories weren't coming back in response to  
10:16:13 15 those subpoenas, correct?

10:16:15 16 A. Maybe I'm misreading this, but I'm reading this as the  
10:16:18 17 records division could use the inventory to make sure they  
10:16:21 18 provided all the documents to the state's attorney's office.

10:16:23 19 Q. All right. Another provision here is general progress  
10:16:27 20 reports. You know what the rules required for general  
10:16:31 21 progress reports, right?

10:16:31 22 A. That they're supposed to use the general progress reports  
10:16:37 23 form.

10:16:37 24 Q. The rules on the book are you are not supposed to take  
10:16:40 25 handwritten notes, you are supposed to use this form?

10:16:43 1 A. That's my understanding.

10:16:43 2 Q. And it's a mandatory rule, is it not?

10:16:45 3 A. The rule that created by the Chicago Police Department.

10:16:49 4 Q. As a matter of practice, they weren't following the rule

10:16:52 5 on the books, were they?

10:16:53 6 A. For the most part, they used general progress reports, I

10:16:56 7 mean, the form. Other notes were either on the back of a

10:17:02 8 general progress report or not on a general progress report.

10:17:04 9 Q. There was a lot of handwritten notes in those files?

10:17:09 10 A. There were a number.

10:17:09 11 Q. What's that?

10:17:10 12 A. There were a number of handwritten notes.

10:17:11 13 Q. In fact, Mr. Brasfield's opinion was 82 percent of the

10:17:14 14 files showed continued use of unofficial handwritten notes.

10:17:17 15 Do you disagree with that or agree with that?

10:17:19 16 A. Again, what files is he referring to?

10:17:21 17 Q. 82 percent of the criminal defense files had -- of the

10:17:26 18 investigative files had evidence -- sorry, investigative files

10:17:28 19 had evidence that handwritten notes were used in contravention

10:17:32 20 of the requirement to use general progress reports?

10:17:34 21 A. On the 51 files?

10:17:35 22 Q. Yes.

10:17:36 23 A. That's possible.

10:17:37 24 Q. All right. Back to the inventories, now, if the purpose

10:17:51 25 of the inventory is to have a comprehensive list of all the

10:17:56 1 documents, all the reports, all the supp reports, all the  
10:17:59 2 GPRs, right?  
10:17:59 3 A. That's in the investigative file.  
10:18:00 4 Q. Okay. Didn't you regard it as a big red flag that the  
10:18:04 5 police department was not turning over the list of everything  
10:18:06 6 that exists?  
10:18:07 7 A. As I said before, I am not sure if they had to send the  
10:18:12 8 list to us or if they were using the list just to make sure  
10:18:15 9 they sent documents to the prosecutor's office.  
10:18:17 10 Q. Well, I'm asking you a different question. Isn't it true  
10:18:19 11 that's a big red flag that the police department didn't want  
10:18:21 12 to turn over the list of all the documents that existed?  
10:18:24 13 A. No.  
10:18:25 14 Q. All right. Let's take a look at Devon Taylor's case.  
10:18:32 15 This is an example, this is Plaintiff's Exhibit 616-6. This  
10:18:37 16 is an example of a inventory that was not produced, correct?  
10:18:41 17 This is page 54 of your report.  
10:18:43 18 A. I have the page.  
10:18:52 19 Q. And it is an example of an inventory that was in the  
10:18:56 20 investigative file but not in the prosecutor's file, correct?  
10:18:59 21 A. Correct.  
10:19:01 22 Q. And on it, in yellow, are examples of documents on this  
10:19:06 23 inventory that also didn't get produced to either the state's  
10:19:10 24 attorneys or the criminal defense attorneys. These chest  
10:19:19 25 memos and some phone records?



10:19:20 1 A. I see that.

10:19:21 2 Q. Isn't it true that if the inventory had not been withheld,  
10:19:25 3 then the criminal defense attorney could have known that -- or  
10:19:29 4 could not have known if it was withheld that there was missing  
10:19:32 5 phone records too?

10:19:33 6 A. Again, assuming that the criminal defense file and the  
10:19:39 7 prosecutor's files are accurate all these years later, and I'm  
10:19:46 8 not assuming that.

10:19:47 9 Q. You said the prosecutors typically didn't have inventories  
10:19:49 10 in their files?

10:19:49 11 A. I'm talking about whether those documents were turned over  
10:19:52 12 during the discovery process from the police to the  
10:19:55 13 prosecutors and the prosecutors to the defense attorney.

10:19:57 14 Q. All right. You do acknowledge that the documents in  
10:20:00 15 yellow were not in the state's attorney's files, right?

10:20:04 16 A. Yes.

10:20:04 17 Q. You do acknowledge that they were in the street files?

10:20:06 18 A. In the investigative file, yes.

10:20:08 19 Q. All right. Showing you another one. This is from the  
10:20:12 20 case of LaToya Jones. This is on page 30 of your report.

10:20:16 21 Here is another inventory that was withheld, correct, or it  
10:20:19 22 wasn't in the state's attorney's files?

10:20:20 23 A. Correct.

10:20:21 24 Q. And it shows a bunch of recorded voice transmissions and  
10:20:26 25 things that also were not produced, correct?



10:20:28 1 A. Those documents were not found in the prosecutor's file.

10:20:39 2 Q. All right. And showing you a copy of a GPR from the  
10:20:45 3 Smith/Hickman case, this is at Defendant's Exhibit 70, this is  
10:20:50 4 an example of a GPR that the jury has seen that is not on the  
10:20:54 5 inventory, plaintiff's exhibit 194, from the Smith/Hickman  
10:20:59 6 investigation. All right, sir?

10:21:01 7 A. I have not examined these documents. I'll take your word  
10:21:05 8 for it.

10:21:06 9 Q. I'm asking you to do that.

10:21:07 10 Now, this document, this investigative inventory,  
10:21:10 11 though administrative, could have tremendous exculpatory value  
10:21:13 12 if it could be proved that this document that was supposedly  
10:21:17 13 created in either May of '85 or May of '86 was not on the  
10:21:21 14 inventory, correct?

10:21:22 15 MR. NOLAND: Judge, opens the door.

10:21:23 16 THE COURT: Okay. Given what I have to ask you, let  
10:21:31 17 me talk to you at sidebar.

10:21:37 18 (The following proceedings were had at sidebar outside the  
10:21:38 19 hearing of the jury:)

10:21:38 20 THE COURT: I figure it's more prudent to what does  
10:21:41 21 it open the door too.

10:21:43 22 MR. NOLAND: I was barred from asking him about  
10:21:45 23 opining on Brady, Brady material for the 15, 483 cases, and  
10:21:52 24 now he is asking him to opine on Brady exculpatory.

10:21:55 25 THE COURT: What was the question that you ask would?

10:21:57 1 MR. LOEVY: Couldn't this administrative document  
10:21:58 2 have exculpatory material if it could show that this report  
10:22:01 3 was --

10:22:02 4 THE COURT: Right. What was the question that you  
10:22:04 5 say that I precluded you from asking about this?

10:22:08 6 MR. NOLAND: It wasn't this document, whether the 43  
10:22:11 7 cases you evaluated, whether or not there was exculpatory due  
10:22:14 8 process, Brady material withheld.

10:22:16 9 MR. LOEVY: Should I rephrase it then, your Honor,  
10:22:18 10 and say this could have been potentially helpful to the  
10:22:21 11 criminal defendant?

10:22:21 12 THE COURT: Well, the question that you asked, if I  
10:22:24 13 am recalling correctly, that I sustained the objection to was  
10:22:26 14 closer to something along the lines of do you have an opinion  
10:22:29 15 about whether the police, maybe the state's attorney, I forget  
10:22:33 16 what they had in there, complied with their obligations under  
10:22:36 17 Brady. I don't think that this type of -- this is about as  
10:22:42 18 squarely within the scope of the direct as I can imagine. I  
10:22:45 19 don't think this opens the door to that is my answer.

10:22:48 20 MR. NOLAND: Okay.

10:22:55 21 (The following proceedings were had in open court in the  
10:22:55 22 presence and hearing of the jury:)

10:22:55 23 THE COURT: Mr. Loevy. You can go ahead.

10:22:58 24 BY MR. LOEVY:

10:22:58 25 Q. Do you remember the question, sir?

10:23:00 1 A. No.

10:23:01 2 Q. If this administrative inventory did not reflect that this

10:23:05 3 GPR that's dated as it states here was not contemporaneously

10:23:11 4 logged, then that inventory, though administrative, could have

10:23:16 5 great exculpatory value, correct?

10:23:17 6 A. I don't believe that's great exculpatory value.

10:23:21 7 Q. It could be shown that this GPR was not logged at the time

10:23:29 8 it was allegedly created, then a criminal defendant could show

10:23:32 9 that this was back dated, couldn't he?

10:23:35 10 A. I guess theoretically that could be done.

10:23:38 11 Q. The reason you create these logs is to have a

10:23:40 12 chronological log of what the file contains, correct?

10:23:44 13 A. What the file contains, yes.

10:23:46 14 Q. And if this document is missing from it, then that's a

10:23:50 15 problem, isn't it?

10:23:51 16 A. It could be. It could be a document was not entered into

10:23:59 17 the list, it doesn't mean it was back dated or didn't exist or

10:24:02 18 did exist.

10:24:03 19 Q. But the criminal defendant has a right to make that

10:24:05 20 argument, doesn't he?

10:24:06 21 A. And the presence of the log doesn't preclude him from

10:24:16 22 making that argument.

10:24:17 23 Q. If he doesn't get the log, he can't make that argument?

10:24:20 24 A. Theoretically the log could help him make that argument.

10:24:23 25 Q. Mr. Noland showed you a document yesterday -- or showed

10:24:36 1 you some other documents that you argued or you characterized  
10:24:40 2 as administrative. I'm going to show you Defendant's Exhibit  
10:24:45 3 268-5. This document says as follows: It looks like it's from  
10:25:01 4 this person to this person, lieutenant, I have a subpoena that  
10:25:04 5 came by way of Joe p-e-r-f-e-t-t-i-. It's dated September 18,  
10:25:09 6 2014. From the description of the subpoena, it is for a file  
10:25:12 7 in the room that last I was aware I was told that I cannot  
10:25:16 8 enter. Can we please clarify who the order not to enter the  
10:25:20 9 files in the lead room is from and whether a subpoena is  
10:25:23 10 enough to cause to retrieve the file.

10:25:25 11 MR. NOLAND: Judge.

10:25:27 12 BY MR. LOEVY:

10:25:27 13 Q. Do you see that?

10:25:27 14 THE COURT: I think I know what this is and so I  
10:25:29 15 don't want to guess. Let me find out at sidebar.

10:25:35 16 (The following proceedings were had at sidebar outside the  
10:25:37 17 hearing of the jury:)

10:25:37 18 THE COURT: Is this me? Is this my order?

10:25:40 19 MR. NOLAND: Yes.

10:25:41 20 MR. LOEVY: No. Let me get the document.

10:25:42 21 THE COURT: Yeah, get the document.

10:25:49 22 THE COURT: I assume it's the lead room, not the lead  
10:25:52 23 room.

10:25:53 24 MR. LOEVY: We thought it was prohibited for  
10:25:55 25 environmental reasons.

10:25:57 1 THE COURT: Like it's secured from a nuclear  
10:26:00 2 holocaust.

10:26:00 3 MR. LOEVY: The reason we thought that is because  
10:26:01 4 Brown said -- we argued was it the boiler room, she said no,  
10:26:06 5 it's the room with the lead in it. Remember what Brown said?  
10:26:07 6 He said it's the lead room.

10:26:08 7 THE COURT: Maybe it is the lead room.

10:26:11 8 MR. LOEVY: I think it's the lead room, but the  
10:26:12 9 answer -- the answer to who the order is from not to get the  
10:26:18 10 files is from me. I would stay away from it.

10:26:20 11 MR. LOEVY: I thought it was environmental.

10:26:24 12 (The following proceedings were had in open court in the  
10:26:25 13 presence and hearing of the jury:)

10:26:25 14 THE COURT: Okay. We are going to move on to a  
10:26:28 15 different area.

10:26:33 16 BY MR. LOEVY:

10:26:33 17 Q. As far as Mr. Brasfield's charts you looked at them  
10:26:36 18 presumably, right?

10:26:37 19 A. In the past, yes.

10:26:38 20 Q. All right. You did not audit them and run his numbers?

10:26:41 21 A. No.

10:26:41 22 Q. In fact, you didn't do any analysis to criminal defense  
10:26:44 23 files at all, correct?

10:26:45 24 A. The pages that were allegedly missing from the criminal  
10:26:50 25 defense files were the ones I was examining.

10:26:52 1 Q. But you didn't take issue with any of his conclusions,  
10:26:57 2 correct?

10:26:57 3 A. Well, I took issue with his whole premise, so I think by  
10:27:00 4 taking issue with his premise, I am taking issue with his  
10:27:03 5 conclusions.

10:27:04 6 Q. He did some analysis about the investigative files, he did  
10:27:07 7 some analysis about the permanent retention files, he did some  
10:27:11 8 analysis of the comparing .two and the fourth thing he did was  
10:27:14 9 compared the investigative files, the blue to the green.

10:27:16 10 That's where you focused your attention, right?

10:27:18 11 A. I focused my attention on the missing pages, alleged  
10:27:23 12 missing pages in the investigative file, yes.

10:27:24 13 Q. All right. Now, Mr. Noland showed you an example of a  
10:27:30 14 document. This is Plaintiff's Exhibit 511-34. This was a GPR  
10:27:37 15 that you said although it was withheld from the state's  
10:27:43 16 attorney and the criminal defense attorney, all the  
10:27:45 17 information in it made it into the supp report so it was a no  
10:27:48 18 harm, no foul?

10:27:49 19 MR. NOLAND: Objection, mischaracterizes.

10:27:51 20 THE COURT: Overruled. You can answer.

10:27:52 21 THE WITNESS: I didn't say it was withheld. I said  
10:27:55 22 it was missing from the criminal defense file and the  
10:27:57 23 prosecutor's file.

10:27:57 24 BY MR. LOEVY:

10:27:58 25 Q. I believe your take away was it was a no harm, no foul

10:28:01 1 because it got into the supp report anyway?

10:28:03 2 A. If not on this page, the next page in sequence.

10:28:06 3 Q. Let's talk about the next page. That's the one I want to  
10:28:08 4 focus on.

10:28:10 5 This is a man named Tim Malone, right?

10:28:13 6 A. Yes.

10:28:13 7 Q. And it says? Here that Tim Malone was Mirandized at 16 --  
10:28:18 8 6:30 p.m. after the lineup, right?

10:28:20 9 A. Yes.

10:28:22 10 Q. Now, I am going to show you the supp report. And this is  
10:28:26 11 511-54. And isn't it true that the supp report actually  
10:28:31 12 contradicts the GPR. Take a look at it.

10:28:35 13 THE COURT: Do you want to point to the area?

10:28:39 14 MR. LOEVY: Your Honor, this is the ELM0, is it not?

10:28:41 15 BY MR. LOEVY:

10:28:42 16 Q. Malone was brought to area one for questioning. Once  
10:28:44 17 there he was given his Miranda warning and he acknowledged he  
10:28:47 18 understood his rights. During this time we're out looking for  
10:28:50 19 witnesses, gathering information, the lawyer arrived, then he  
10:28:55 20 was brought to -- this witness was brought to view a lineup in  
10:29:01 21 area one and positively identify Malone. Do you see that?

10:29:04 22 A. Yes.

10:29:04 23 Q. This summary in the official report implies that he was  
10:29:07 24 given his Miranda warning before he was given a lineup or put  
10:29:10 25 in a lineup, right?



10:29:11 1 A. In that lineup, yes.

10:29:13 2 Q. All right. But this one contradicts it, does it not, the  
10:29:18 3 GPR says he was Mirandized after the lineup?

10:29:21 4 A. It's different. It doesn't mean he wasn't Mirandized  
10:29:26 5 twice.

10:29:26 6 Q. All right. But the criminal defense -- the criminal  
10:29:29 7 defendant had a right to the GPR too, didn't he?

10:29:33 8 A. To the investigative material, yes, he did.

10:29:37 9 Q. All right. You were also asked yesterday about the  
10:29:42 10 Crockett case. I'm going to show you -- I am not going to go  
10:29:48 11 through 50 pages, but I am going to go through two.

10:29:50 12 This is the official supp report, 873-5. It looks  
10:29:55 13 like it's a car in the Crockett case. They're looking for a  
10:29:59 14 74, 76 Chevy Nova. Do you see that?

10:30:01 15 A. Yes.

10:30:02 16 Q. Now, I'm going to show you a page that from the  
10:30:05 17 investigative file, this is 448-90. Can you confirm for the  
10:30:10 18 jury that that was not found in the state's attorney or the  
10:30:12 19 criminal defense attorney's files?

10:30:16 20 MR. NOLAND: Objection, foundation.

10:30:17 21 THE COURT: Overruled.

10:30:17 22 THE WITNESS: I'm sorry. Can you tell me what case?  
10:30:22 23 What page.

10:30:23 24 BY MR. LOEVY:

10:30:23 25 Q. This is the Crockett case which is in your report 101.



10:30:55 1 A. This is a case where the prosecutors were unable to locate  
10:30:57 2 their file.

10:30:58 3 Q. All right. But it wasn't in the criminal defense  
10:31:00 4 attorney's files, right?

10:31:01 5 A. Right. This is -- yes.

10:31:05 6 Q. All right. And it's talking about the blue Chevy Nova,  
10:31:13 7 the two-door that they're looking for, right?

10:31:15 8 A. Yes.

10:31:16 9 Q. And it's talking about a totally different motive that has  
10:31:19 10 nothing to do with Mr. Crockett, isn't it?

10:31:21 11 A. I have not read this before.

10:31:26 12 Q. Take a look at it. It's highlighted. It's talking about  
10:31:29 13 a gangster disciple and a GD and then this is the night  
10:31:43 14 before, the day before the shooting. The car is not rated by  
10:31:53 15 an older, just recently out of the joint, the car pulled up  
10:31:57 16 out of the alley, ran out of the vehicle, I was a advice Lord,  
10:32:01 17 they had a beef, they confronted him. After the  
10:32:04 18 confrontation, he returned and then ^ Karl ^ Carl, this is the  
10:32:07 19 name I want to focus on, ^ Karl ^ Carl made a motion with his  
10:32:10 20 hand forming a pistol and said bang. Chap /PHABs?

10:32:16 21 A. That is correct.

10:32:16 22 Q. /STKPHR-FRPBLTS that is a lead that is Albert Chapman,  
10:32:20 23 article, that is a lead that is different than what is in the  
10:32:23 24 supp reports, correct?

10:32:24 25 A. That's correct.

10:32:25 1 Q. In other words, there's no supp report in the Crockett  
10:32:28 2 case that reflect this information?  
10:32:30 3 A. That's correct.  
10:32:32 4 Q. And looking at the state's answer to discovery in the same  
10:32:36 5 place, Plaintiff's Exhibit 359-260, Mr. Noland showed you  
10:32:39 6 /KPAFRPBLs of answers to discovery, correct?  
10:32:41 7 A. Yes.  
10:32:42 8 Q. The names on this missing report are not listed in the  
10:32:47 9 state's list of names, correct?  
10:32:51 10 A. That's -- the prosecutor's answer to discovery doesn't  
10:32:56 11 list every single name that's in a police report.  
10:32:58 12 Q. You did talk yesterday with Mr. Noland isn't it true that  
10:33:00 13 the names are what --  
10:33:02 14 A. Yes.  
10:33:02 15 Q. All right. So the names on this supp report were not only  
10:33:06 16 not -- I'm sorry, the names on this GPR were not only in the  
10:33:09 17 sum reports but they weren't in the state's answer to  
10:33:11 18 discovery, right?  
10:33:12 19 A. From the documents you just showed me, that's true.  
10:33:17 20 Q. All right. So this would be an example of the street file  
10:33:21 21 process being maintained to the detriment of a criminal  
10:33:26 22 defendant, correct?  
10:33:26 23 A. I can't answer it that way because of the inadequacy of  
10:33:31 24 the criminal defense file in this case.  
10:33:33 25 Q. All right. But you could say the criminal defense file

10:33:36 1 had a terrible record keeping but it's not in the supp reports  
10:33:39 2 either, right? That's true, right, sir?  
10:33:41 3 A. That's true, but if it's in the GPR.  
10:33:44 4 THE COURT: The answer is that's true. The rest is  
10:33:46 5 stricken.  
10:33:47 6 BY MR. LOEVY:  
10:33:51 7 Q. All right. You said -- if I understand your testimony  
10:33:55 8 about half of the documents that were in the criminal defense  
10:33:58 9 attorney's files wasn't missing, just visually, if you look at  
10:34:03 10 the stacks, that one stack is about half as big as the other  
10:34:06 11 staff?  
10:34:06 12 MR. NOLAND: Objection, that mischaracterizes.  
10:34:09 13 THE WITNESS: That's not half.  
10:34:12 14 BY MR. LOEVY:  
10:34:14 15 Q. Give me a percent?  
10:34:15 16 THE COURT: The answer can stand.  
10:34:16 17 THE WITNESS: I don't know the percentage, sir.  
10:34:17 18 BY MR. LOEVY:  
10:34:18 19 Q. Can you give me a ballpark, do you think it's two-thirds,  
10:34:21 20 one-third?  
10:34:21 21 A. It's maybe a third. I don't know what it is eyeballing  
10:34:32 22 it.  
10:34:33 23 Q. Just eyeballing it. When you gave this number, 94  
10:34:37 24 percent, it's not 94 percent, is it?  
10:34:38 25 A. --

10:34:41 1 Q. Let's just start with that question. It's not 94 percent,  
10:34:44 2 is it?

10:34:44 3 MR. NOLAND: Objection.

10:34:44 4 THE COURT: You need to make the question a little  
10:34:47 5 clearer.

10:34:48 6 BY MR. LOEVY:

10:34:48 7 Q. When you throughout the number 94 percent, what you meant  
10:34:53 8 was 94 percent of the material you deemed investigatory or  
10:34:57 9 relevant or that kind of thing, right?

10:34:58 10 A. 94 percent of the documents alleged to be missing were  
10:35:02 11 accounted for in the police investigative file or the  
10:35:07 12 prosecutor's file.

10:35:08 13 Q. But that's not 94 percent, is it, it's closer to  
10:35:11 14 two-thirds. That's what I'm not getting?

10:35:13 15 A. It's of the pages allegedly missing.

10:35:17 16 Q. But?

10:35:18 17 A. In other words, the -- it was not alleged that the  
10:35:22 18 criminal defense file was missing every single document,  
10:35:26 19 criminal defense files were alleged to be missing a certain  
10:35:30 20 amount of pages.

10:35:31 21 Q. I'm not -- so this is what the criminal defense attorneys  
10:35:34 22 were allegedly missing, right?

10:35:37 23 A. Correct.

10:35:37 24 Q. And it's skewed a little bit because there's a couple of  
10:35:41 25 200 pages based on a typo that should not have been listed as

10:35:45 1 missing, right?

10:35:45 2 A. Well, they were listed as missing, though.

10:35:48 3 Q. Like this one chunk is accountable entirely to that typo,

10:35:53 4 correct?

10:35:53 5 A. I don't know if it's that one, but --

10:35:59 6 Q. There's a couple that are --

10:36:00 7 A. They were the pages that were alleged to be missing.

10:36:03 8 Q. All right. So why is the difference not the relevant

10:36:07 9 personal. Where is the 94 percent versus the difference?

10:36:10 10 A. The criminal defense attorney's files were missing a set

10:36:17 11 -- alleged to be missing a set number of pages. 94 percent of

10:36:22 12 those documents were found either -- were found in the state's

10:36:29 13 attorney's file or -- I'm sorry, were found in the state's

10:36:33 14 attorney's file. So it's not 94 percent of the total. It's

10:36:38 15 94 percent of what was alleged to be missing was found, was

10:36:41 16 accounted for.

10:36:42 17 Q. But the pile on the right is what was allegedly missing,

10:36:45 18 right?

10:36:45 19 A. Yes.

10:36:45 20 Q. And the pile on the left is what was allegedly found?

10:36:48 21 A. No, no.

10:36:49 22 Q. The two small piles there?

10:36:50 23 A. That's -- those are the pages that were alleged to be

10:36:54 24 missing.

10:36:54 25 Q. Okay. And then the pile on the left is what?

10:36:56 1 A. My left?

10:36:58 2 Q. I'm sorry. My left. The smaller pile.

10:37:03 3 A. Well, it actually was broken into the stacks, I believe,  
10:37:09 4 this stack, right?

10:37:10 5 Q. Okay. So what's this stack?

10:37:12 6 A. I'm sorry. It's the material that that I are he viewed  
10:37:18 7 yesterday, that was the pages that were still not found.

10:37:21 8 Q. All right.

10:37:21 9 A. In the prosecutor's file or accounted for in any way.

10:37:25 10 Q. All right. Can you hold that up then? That is not 6  
10:37:30 11 percent of the big stack, is it?

10:37:32 12 A. Sure, it is.

10:37:32 13 Q. This, what you're holding in your hand is 6 percent of  
10:37:38 14 this?

10:37:38 15 A. Yes.

10:37:38 16 Q. So 20 times that -- no?

10:37:42 17 THE COURT: Would be about 16 and a half times.

10:37:44 18 BY MR. LOEVY:

10:37:45 19 Q. 16 and a half times. Thank you, your Honor.

10:37:47 20 Let's get away from math for a second.

10:37:50 21 Now that you had a chance to review the permanent  
10:37:55 22 retention file, showing you again plaintiff's 125, in the  
10:37:58 23 Smith/Hickman case, this is Earl Hawkins's rap sheet, and it's  
10:38:06 24 got an inquiry date of April 27th, which is roughly the date  
10:38:09 25 of the murder, it should have been 28?

10:38:11 1 A. I see that.

10:38:12 2 Q. If you were in your review, where did you do your review,  
10:38:16 3 by the way, when you were doing your review, not last night,  
10:38:19 4 when you were doing your protocol for the other stuff?

10:38:21 5 A. Primarily out of the city's law firm's office.

10:38:25 6 Q. All right. When you were over at the city's law firm  
10:38:28 7 office, if you would have come across this document in the  
10:38:31 8 Smith/Hickman pile, would you put this in the relevant missing  
10:38:35 9 or the irrelevant missing?

10:38:36 10 A. Well.

10:38:37 11 MR. KULWIN: Asked and answered, Judge.

10:38:39 12 THE COURT: I don't think that particular -- I don't  
10:38:40 13 think that particular question was asked and answered.  
10:38:43 14 Overruled.

10:38:43 15 THE WITNESS: I'd have to be doing the full analysis  
10:38:46 16 of the documents that were alleged to be missing and documents  
10:38:49 17 that were found in the prosecutor's file. I'd have to do all  
10:38:52 18 that.

10:38:53 19 BY MR. LOEVY:

10:38:53 20 Q. But you did get last name the permanent retention file,  
10:38:56 21 right?

10:38:56 22 A. That's one aspect of my review. I would have reviewed a  
10:38:59 23 lot more documents.

10:39:00 24 Q. You have had a chance, though, to look at every sing  
10:39:05 25 single document in the official file?

10:39:09 1 A. This is the RD.

10:39:10 2 Q. That's what the Chicago Police Department turns over as  
10:39:11 3 the official file, right /STKPHR-FRPBLT?

10:39:13 4 A. No, they -- pursuant to subpoena and discovery process, we  
10:39:18 5 get the investigative file as well as the records division  
10:39:21 6 file.

10:39:22 7 Q. All right. Based on the official file, if you had been  
10:39:25 8 doing your review and all was available to you was the  
10:39:28 9 official file, would you have put this in the relevant  
10:39:31 10 withheld or the irrelevant withheld pile?

10:39:33 11 A. That's not the way I did my analysis, though. I needed to  
10:39:36 12 have all the other sources of documents to determine if it was  
10:39:40 13 in the prosecutor's file, which was received from the police,  
10:39:44 14 and then tendered during discovery.

10:39:46 15 Q. You acknowledge you only read 500 of the 99,000 pages,  
10:39:50 16 right?

10:39:50 17 A. Read, I skimmed more pages than that.

10:39:54 18 Q. You did a lot of skimming, right.

10:39:57 19 How about this document here? 1-121 with the  
10:40:01 20 nickname sundown suggesting the police were looking for an El  
10:40:05 21 Rukn named sundown. Would you have put that in the irrelevant  
10:40:07 22 withheld or the relevant withheld?

10:40:09 23 A. The problem I have in asking your question is all I  
10:40:15 24 reviewed yesterday is these, the records division files. I  
10:40:19 25 don't have the investigative file, I don't have the state's



10:40:21 1 attorney file, so for me to be able to determine whether this  
10:40:24 2 document was already available in the prosecutor's file or was  
10:40:29 3 found elsewhere, I can't make that determination.

10:40:31 4 Q. All right. Then I am going to ask you to make the  
10:40:34 5 determination based on just the official file that you have  
10:40:36 6 now reviewed, okay?

10:40:37 7 A. That's not the way to do the analysis.

10:40:39 8 Q. Then I am asking you a different question.

10:40:41 9 Based on what's in the official file, would this have  
10:40:44 10 been irrelevant withheld or relevant withheld?

10:40:47 11 MR. NOLAND: Objection, Judge, incomplete  
10:40:48 12 hypothetical.

10:40:48 13 THE COURT: Overruled.

10:40:53 14 THE WITNESS: I would say it's a document that was  
10:40:57 15 should have been provided during discovery.

10:40:59 16 BY MR. LOEVY:

10:41:00 17 Q. How about this photograph of Earl Hawkins, should this  
10:41:03 18 have been provided during discovery?

10:41:04 19 A. His name is already identified in these records. The  
10:41:12 20 common practice is to provide the mug shot during discovery.

10:41:17 21 Q. All right. Because it might have been relevant to Mr.  
10:41:20 22 Fields that in April of '84, they were showing Hawkins' photo  
10:41:25 23 to the witnesses and not getting an ID?

10:41:28 24 MR. KULWIN: Mischaracterizes, argumentative and  
10:41:31 25 prejudicial.

10:41:32 1 THE COURT: Sustained as to argumentative.

10:41:33 2 BY MR. LOEVY:

10:41:34 3 Q. All right. Couldn't a criminal defendant have made  
10:41:37 4 exculpatory value of the fact that the police had his  
10:41:39 5 photograph as far back as April 84 when they were canvassing  
10:41:43 6 witnesses?

10:41:44 7 A. I don't know if they had the photograph. My review of the  
10:41:48 8 file would be different than the question you're asking.

10:41:51 9 Q. All right. Let's take a look at another note from the  
10:41:54 10 file. Based on the official record, would this document,  
10:41:58 11 1-68, this Edwards brother, Lawrence and Marshall Edwards,  
10:42:03 12 would this have been irrelevant withheld or relevant withheld?

10:42:06 13 MR. NOLAND: Objection, Judge, same objection.

10:42:08 14 THE COURT: I'll let you do one more. The objection  
10:42:13 15 is overruled.

10:42:13 16 MR. LOEVY:

10:42:13 17 THE ATTORNEY:

10:42:14 18 Q. Then let's shoot to the important one?

10:42:16 19 MR. KULWIN: Judge, I am going to object. Move to  
10:42:18 20 strike.

10:42:18 21 THE COURT: Overruled.

10:42:18 22 BY MR. LOEVY:

10:42:19 23 Q. 169, take a look at this one. Heard the Edwards brothers  
10:42:24 24 talking about killing Fuddy because of the shooting. Saw them  
10:42:27 25 about 900 in the stairwell. They were talking about getting

10:42:30 1 Fuddy. We've seen this note before. Would this have been  
10:42:32 2 relevant or irrelevant?  
10:42:33 3 A. It should have been provided during discovery.  
10:42:35 4 Q. But isn't it true that a handwritten note like this, you  
10:42:40 5 can't tell from just a -- those are just names scrawled on a  
10:42:43 6 piece of paper, right?  
10:42:44 7 A. There's other information around it, but.  
10:42:48 8 Q. Yeah, but it could turn out that this handwritten  
10:42:51 9 note with names ^ scrawled on a piece of paper turned out to  
10:42:55 10 be the actual killers, right, that could happen?  
10:42:57 11 A. Theoretically, yes.  
10:42:58 12 Q. That's why it's important that all the handwritten  
10:43:00 13 scrawled names in the investigative file have to be turned  
10:43:02 14 over to the criminal defendant, right?  
10:43:03 15 A. If it's relevant to the investigation, yes.  
10:43:08 16 Q. And presumably it wouldn't be an investigative file unless  
10:43:12 17 it was relevant to the investigation, correct?  
10:43:13 18 A. Well, we found a lot of pieces of paper that were misfiled  
10:43:17 19 or not relevant to the investigation.  
10:43:19 20 Q. But just looking at this piece of paper, you can't tell?  
10:43:23 21 MR. NOLAND:  
10:43:24 22 MR. KULWIN: Objection, argumentative, Judge.  
10:43:25 23 THE COURT: Overruled.  
10:43:28 24 BY MR. LOEY:  
10:43:28 25 Q. On its face?

10:43:29 1 A. Knowing more of the facts of the case, that might be very  
10:43:32 2 important information ^ .  
10:43:34 3 Q. All right. I am going to show you a few more pages from  
10:43:48 4 the Smith/Hickman investigation. And I'm going to ask you if  
10:43:53 5 this information was reflected in the permanent retention file  
10:43:56 6 that you saw last night. Okay?  
10:43:59 7 A. Okay.  
10:43:59 8 Q. A guy driving the car, this is the getaway car was Ed  
10:44:05 9 Stewart with Darryl Baldwin and Chico. Baldwin with Olivia  
10:44:10 10 Wallace. None of this information is in the official reports,  
10:44:13 11 correct?  
10:44:13 12 A. I didn't see that, no.  
10:44:14 13 Q. All right. And that's a problem, right?  
10:44:17 14 A. It could be. If the information in those notes were  
10:44:28 15 provided, then it wouldn't be a problem.  
10:44:30 16 Q. But you have what was provided, that's the permanent  
10:44:33 17 retention file?  
10:44:33 18 MR. NOLAND: Objection, Judge.  
10:44:35 19 THE COURT: Rephrase the question /SKPWHR-FRPBLT.  
10:44:36 20 THE ATTORNEY:  
10:44:36 21 Q.  
10:44:36 22 MR. LOEVY: You know what was provided to /PHR-FP  
10:44:38 23 because you reviewed it last night.  
10:44:40 24 THE WITNESS: I know.  
10:44:41 25 THE COURT: I am going to sustain the objection.

10:44:43 1 BY MR. LOEVY:

10:44:44 2 Q. All right. Looking at this document, this looks like an

10:44:46 3 administrative document, correct?

10:44:48 4 A. It's a gang arrest information card.

10:44:56 5 Q. But it identifies Chico as Ray mar tell, right?

10:44:59 6 A. Yes.

10:45:01 7 Q. And then there's the GPR with Rodell Banks, this also was

10:45:07 8 information that was not in any supp report, correct?

10:45:10 9 A. Rodell Banks, I did not -- I don't think I saw his name in

10:45:16 10 there, no.

10:45:16 11 Q. And there were other GPRs that were also not in supp

10:45:21 12 reports in the official file, correct?

10:45:23 13 A. If you give me one specific.

10:45:25 14 Q. This one, plaintiff's 1-106 reflects a lot of information

10:45:29 15 about the shooting and an alternate /S-PLT that was nowhere

10:45:34 16 reflected in the permanent retention file, correct?

10:45:35 17 A. That information, no.

10:45:37 18 Q. All right. Having now been shown maybe 10 pages from the

10:45:44 19 street file in the Smith/Hickman case, by the way, that's

10:45:48 20 about 5 percent of the total, right, if it's a 200 page file?

10:45:52 21 A. I'll take your word on the math.

10:45:54 22 Q. All right. That 5 percent that was withheld that was in

10:46:00 23 the street file, was that typical of the 5 percent that was

10:46:03 24 withheld from the other files, was it an aberration abrasion,

10:46:06 25 was it an outlier, can you give us some perspective?

10:46:12 1 A. The documents that you showed me are investigative  
10:46:15 2 documents for the most part that should have been provided  
10:46:17 3 during the discovery process. All the different cases I  
10:46:20 4 examined, that's the documents that were not found in the  
10:46:23 5 prosecutor's files, which could have been there originally,  
10:46:26 6 were not of that nature.

10:46:27 7 Q. All right. But the 5 percent that was missing from the  
10:46:31 8 permanent retention file in the Smith/Hickman case, was that  
10:46:35 9 an aberration 5 percent or was it typical, was the  
10:46:38 10 Smith/Hickman one typical or atypical?

10:46:41 11 A. Each one of the cases I examined were sue generis, you  
10:46:46 12 have to look at each one on their own. There is no typical  
10:46:50 13 pattern to percentages of pages found or not found.

10:46:53 14 Q. Would it be fair to say in terms of information missing  
10:46:56 15 the Smith/Hickman file fell somewhere in the middle of the  
10:46:59 16 level of exculpatory information that was missing?

10:47:01 17 MR. NOLAND: Objection, Judge, vague.

10:47:02 18 THE COURT: Sustained.

10:47:03 19 BY MR. LOEVY:

10:47:06 20 Q. Each of the files was missing information, right?

10:47:08 21 A. Missing allege would documents missing were not found in  
10:47:14 22 the prosecutor's file.

10:47:14 23 Q. And some of the missing information was more relevant in  
10:47:17 24 some files than in other files, right?

10:47:18 25 A. Actually, very few of it was investigative material, a lot

10:47:25 1 of it was duplicates and other stuff.

10:47:27 2 Q. All right. So are you saying the Smith/Hickman case was  
10:47:30 3 an outlier or was typical?

10:47:32 4 A. As I said before, you can take each case on its own and  
10:47:36 5 examine it.

10:47:37 6 MR. LOEVY: I have no further questions, your Honor.

10:47:40 7 THE COURT: Mr. Noland.

10:47:41 8 - - -

10:47:41 9 BERNARD MURRAY, REDIRECT EXAMINATION

10:47:41 10 BY MR. NOLAND:

10:48:31 11 Q. Mr. Murray, I'm showing you the answer to discovery that  
10:48:33 12 we showed you yesterday in the Crockett case. Do you remember  
10:48:35 13 that?

10:48:35 14 A. Yes.

10:48:35 15 Q. Counsel asked you some questions about a GPR from the  
10:48:38 16 criminal defense file. Do you remember that a moment ago?

10:48:41 17 A. Yes.

10:48:41 18 Q. Was there a state's attorney file found for the Crockett  
10:48:46 19 case?

10:48:46 20 A. No, there was not.

10:48:47 21 Q. What is your opinion about whether or not the criminal  
10:48:49 22 defense file in the Crockett case is complete or incomplete?

10:48:51 23 A. It's wholly incomplete, not wholly, but very much  
10:48:54 24 incomplete.

10:48:55 25 Q. What is that based upon?



10:48:56 1 A. Part of the analysis was the document you're looking at  
10:49:02 2 right here, the answer to discovery, the criminal defense  
10:49:04 3 attorney claims that they didn't have or the file is missing  
10:49:08 4 documents that have a whole bunch of names that were on police  
10:49:12 5 reports.

10:49:12 6 Q. All right. And counsel had showed you and suggested that  
10:49:16 7 names from that GPR he showed you would necessarily be in the  
10:49:19 8 answer to discovery, do you remember those questions?

10:49:20 9 A. Yes.

10:49:21 10 Q. Why wouldn't those names necessarily be in the answer to  
10:49:23 11 discovery?

10:49:23 12 A. The answer to discovery does try to be somewhat  
10:49:27 13 comprehensive, but it's usually the witnesses the prosecutor  
10:49:30 14 intends to call at trial or potentially call at trial.

10:49:33 15 Q. Your Honor, may I quickly have the ELM0, please?

10:49:46 16 THE COURT: Yes. There you go.

10:49:53 17 MR. NOLAND: Thank you.

10:49:54 18 BY MR. NOLAND:

10:49:54 19 Q. Showing you the blue back in the Derrick Johnson case that  
10:49:59 20 counsel talked about a little while ago. Do you remember  
10:50:01 21 that?

10:50:01 22 A. Yes.

10:50:02 23 Q. And turning to the Derrick Johnson section of your report  
10:50:20 24 which would be at page 31, you state that plaintiff contends  
10:50:28 25 after an examination of the investigative file numbered ACB



10:50:32 1 and you give the numbers that 2 one of the 187 pages were not  
10:50:35 2 found in the defense file, an examination of the state's file  
10:50:39 3 reveals that at least 2 of those 21 pages were present in the  
10:50:43 4 prosecutor's file. Is that what you wrote?

10:50:44 5 A. Yes.

10:50:44 6 Q. Mr. Murray, this blue back indicates that a 181 page  
10:50:54 7 street file which includes 18 pages that have writing on the  
10:50:59 8 back and a series of other things were tendered in open court;  
10:50:59 9 is that right?

10:51:02 10 A. That's correct.

10:51:02 11 Q. And would you have an opinion then whether the state's  
10:51:05 12 file is currently complete or incomplete on the Derrick  
10:51:09 13 Johnson case?

10:51:10 14 A. I'd say the state's attorney's file is currently  
10:51:13 15 incomplete. At the time that they were preparing for trial,  
10:51:16 16 they had far more documents than are in the file now.

10:51:36 17 MR. NOLAND: Your Honor, may I have the computer  
10:51:37 18 back?

10:51:38 19 THE COURT: Okay.

10:51:41 20 MR. NOLAND: Can you pull up plaintiff's 118, page  
10:51:44 21 120. Exhibit 1, page 118. Please put it side by side with  
10:52:31 22 plaintiff's 86, page 9.

10:52:34 23 BY MR. NOLAND:

10:52:48 24 Q. Counsel asked you some questions about these documents a  
10:52:51 25 moment ago. Do you remember that Mr. Murray?

10:52:59 1 A. Yes.

10:52:59 2 Q. And the questions he asked was about whether or not an RD  
10:53:03 3 number, a case report from another case would be potentially  
10:53:06 4 relevant in a case. Do you remember that?

10:53:07 5 A. Yes.

10:53:09 6 MR. NOLAND: Laura, could you highlight on the page  
10:53:12 7 on the left, plaintiff's 1, the RD number at the top  
10:53:15 8 right-hand corner.

10:53:16 9 BY MR. NOLAND:

10:53:17 10 Q. What's that number is it 150899?

10:53:22 11 A. 150899.

10:53:27 12 MR. NOLAND: Laura, if you could take that.

10:53:29 13 MR. NOLAND:

10:53:30 14 THE ATTORNEY:

10:53:30 15 Q. And then on the document on the right, the Delbert Edwards  
10:53:35 16 section, the third line down, can you highlight that number.  
10:53:37 17 What's that number say, Mr. Murray?

10:53:39 18 A. 150899.

10:53:41 19 Q. Mr. Murray, and this was -- this report on the right was  
10:53:48 20 one in the stack of materials that counsel asked you to review  
10:53:51 21 last night; is that right?

10:53:53 22 A. Let me just take a look. Yes.

10:53:56 23 Q. All right. And this is the material that you understand  
10:53:59 24 that the plaintiffs acknowledge was provided and available Mr.  
10:54:04 25 Fields' criminal defense attorney?

10:54:05 1 A. Yes.

10:54:05 2 Q. So this document would show that the case report on the  
10:54:11 3 left which Mr. Loevy referred to in fact was available and  
10:54:15 4 identified in the information provided to them; is that right?

10:54:18 5 A. Yes.

10:54:18 6 Q. Thank you.

10:54:20 7 Counsel asked you some questions about cover pages of  
10:54:26 8 these files. Were cover pages something /SHA you would  
10:54:30 9 routinely receive as a prosecutor?

10:54:31 10 A. Cover pages were not routinely received.

10:54:34 11 Q. Was that something that you would be reaching out to  
10:54:38 12 obtain cover pages of files or file jackets?

10:54:41 13 A. No.

10:54:41 14 Q. Why not?

10:54:42 15 A. Well, the subpoena was for all the documents contained in  
10:54:44 16 the file and the police -- whoever responded to the subpoena  
10:54:50 17 were responding to the subpoena on that case. I didn't need  
10:54:52 18 the cover, the cardboard cover of the file.

10:54:55 19 Q. All right. Another topic, Mr. Murray. We talked a lot  
10:54:59 20 about administrative documents and a large packet of documents  
10:55:02 21 we went through?

10:55:02 22 A. Yes.

10:55:03 23 Q. And did you evaluate the 43 files here to determine  
10:55:07 24 whether or not these administrative documents were relevant to  
10:55:10 25 those particular 43 proceedings?

10:55:13 1 MR. LOEVY: Your Honor, objection, it was covered in  
10:55:15 2 the last exam.

10:55:16 3 THE COURT: You said covered in direct?

10:55:18 4 MR. LOEVY: Yes.

10:55:18 5 THE COURT: I kind of think it was. Sustained.

10:55:20 6 BY MR. NOLAND:

10:55:21 7 Q. Counsel asked you in general whether or not administrative  
10:55:23 8 -- he was comparing administrative and exculpatory. Do you  
10:55:27 9 remember those questions?

10:55:27 10 A. Yes.

10:55:28 11 Q. Mr. Murray, what's your opinion with respect to whether or  
10:55:31 12 not administrative documents are exculpatory?

10:55:34 13 A. That they're not exculpatory.

10:55:36 14 Q. All right. Counsel had asked you some questions, showed  
10:55:53 15 you an I have inventory with respect to the Devon /TERL case,  
10:55:56 16 do you recall that and some phone records?

10:55:59 17 A. Yes.

10:55:59 18 Q. We discussed those phone records yesterday; is that right?

10:56:02 19 A. Yes, we did.

10:56:02 20 Q. All right. What is your opinion with respect to whether  
10:56:04 21 those phone records were available to the prosecutor?

10:56:06 22 A. The indication in the file was that the prosecutor had the  
10:56:09 23 phone records at one point and was wondering if they had any  
10:56:12 24 relevant information on them, so even though the phone records  
10:56:16 25 are not in the prosecutor's files, it appears at one time they

10:56:21 1 had them.

10:56:21 2 Q. All right. Mr. Murray, referring back to yesterday, do  
10:56:27 3 you remember some questions about whether the plaintiff's  
10:56:28 4 expert Mr. Brasfield was relying upon investigative material  
10:56:33 5 of blank pages and other administrative documents, do you  
10:56:39 6 remember that?

10:56:40 7 A. Yes.

10:56:40 8 Q. And do you remember he was relying on those as  
10:56:42 9 administrative investigative material?

10:56:45 10 A. Yes.

10:56:45 11 Q. ^ this is the chart that Mr. Brasfield did and  
10:56:49 12 plaintiff's counsel, is it true the one on the board in front  
10:56:51 13 of you?

10:56:52 14 A. Yes.

10:56:53 15 Q. And I'm handing you a full copy of it.

10:56:58 16 MR. NOLAND: Laura, could we have Exhibit 394, page  
10:57:03 17 1.

10:57:03 18 BY MR. NOLAND:

10:57:08 19 Q. On the screen here is one of those investigative file  
10:57:11 20 controls; is that right?

10:57:11 21 A. Yes.

10:57:11 22 Q. All right. Directing your attention to page 29 of  
10:57:16 23 Mr. Brasfield's table?

10:57:29 24 A. Okay.

10:57:29 25 Q. Paragraph 92.

10:57:34 1 A. Paragraph 92.

10:57:35 2 Q. Under the column missing investigatory information is the  
10:57:44 3 page that we are talking about which is also ACB 4925. Is  
10:57:49 4 that identified by Mr. Brasfield as missing investigatory  
10:57:52 5 material?

10:57:52 6 A. Yes, it is.

10:58:01 7 MR. NOLAND: Laura, could we have Exhibit 394, page  
10:58:04 8 116.

10:58:04 9 BY MR. NOLAND:

10:58:24 10 Q. Mr. Murray, just a reminder, was this one of the  
10:58:27 11 administrative documents we talked about yesterday, one of the  
10:58:29 12 subpoenas were well after the civil subpoenas well after the  
10:58:31 13 criminal trial?

10:58:32 14 A. Yes, it is.

10:58:32 15 Q. And I'm directing your attention to Mr. Brasfield's table.  
10:58:38 16 Page 33.

10:58:44 17 MR. LOEVY: Your Honor, we object on Rule 26.

10:58:48 18 THE COURT: Can I see the lawyers at sidebar, please.  
10:58:50 19 Can you bring the document, the other document. The big one  
10:58:55 20 on the screen.

10:58:58 21 (The following proceedings were had at sidebar outside the  
10:59:02 22 hearing of the jury:)

10:59:02 23 THE COURT: What's the Rule 26 issue?

10:59:03 24 MR. LOEVY: He didn't audit Mr. Brasfield's -- he  
10:59:07 25 didn't audit Mr. Brasfield's results.

10:59:10 1 THE COURT: Spreadsheet. What was the question?

10:59:13 2 MR. NOLAND: Whether or not that particular document  
10:59:14 3 was -- all these documents were on the missing investigative  
10:59:19 4 material category that Mr. Brasfield was relying upon in his  
10:59:21 5 report.

10:59:21 6 THE COURT: Now tell me again what the issue is.

10:59:24 7 MR. LOEVY: Mr. Brasfield said I made a gross  
10:59:26 8 analysis what's in, what's out, and they're now going document  
10:59:30 9 by document. There was nothing in his report where he said I  
10:59:33 10 think certain documents were claimed and shouldn't have been  
10:59:37 11 claimed.

10:59:38 12 THE COURT: Shouldn't have been claimed as.

10:59:40 13 MR. LOEVY: Investigatory or whatever the point he is  
10:59:42 14 making.

10:59:44 15 MR. ART: With respect to attachment D. It's never  
10:59:48 16 been audited the way it's on the stand now /STPH0 what  
10:59:52 17 Mr. Murray 16 of his report is based upon the table, the table  
10:59:58 18 has a column missing investigative material, Mr. Loevy  
11:00:00 19 suggested yesterday that Mr. Brasfield was not claiming that  
11:00:02 20 all those administrative documents and blank pages were  
11:00:06 21 investigative material. In fact, it's right there on this  
11:00:09 22 table that he is claiming.

11:00:10 23 THE COURT: I am overruling the objection.

11:00:12 24 (The following proceedings were had in open court in the  
11:00:17 25 presence and hearing of the jury:)

11:00:17 1 THE COURT: The objection is overruled.

11:00:20 2 BY MR. NOLAND:

11:00:22 3 Q. Mr. Murray, with respect to this page, 116 on the screen,  
11:00:28 4 directing your attention to page 33 of Mr. Brasfield's table,  
11:00:32 5 paragraph 132.

11:00:35 6 A. Okay.

11:00:35 7 Q. And is page ACB 19028 identified as missing investigative  
11:00:43 8 material by Mr. Brasfield?

11:00:43 9 A. Yes, it is.

11:00:46 10 MR. NOLAND: Laura, could we have page 139 of Exhibit  
11:00:50 11 394.

11:00:51 12 BY MR. NOLAND:

11:00:53 13 Q. Mr. Murray, I'll be directing your attention to page 1 of  
11:01:01 14 Brasfield's table, paragraph 7.

11:01:05 15 Mr. Murray, on the screen, we have one of the court  
11:01:08 16 attendance reports that we talked about yesterday, right?

11:01:10 17 A. Yes.

11:01:10 18 Q. And is it your opinion that that's administrative?

11:01:12 19 A. Yes.

11:01:12 20 Q. And this is page ACB 5609. Does Mr. Brasfield contend  
11:01:22 21 that this is a missing -- this is missing investigatory  
11:01:25 22 material?

11:01:25 23 A. He does.

11:01:26 24 MR. NOLAND: Laura, can we have Exhibit 394, page  
11:01:31 25 223.



11:01:31 1 BY MR. NOLAND:

11:01:33 2 Q. Mr. Murray, I'm directing your attention to page 27 of  
11:01:35 3 Brasfield's table, paragraph 85, page -- did Mr. Brasfield  
11:01:49 4 contend that this blank page, page ACB 48131 is missing  
11:01:54 5 investigative material?

11:01:55 6 A. Yes.

11:01:56 7 MR. NOLAND: Laura.

11:01:57 8 MR. LOEVY: Your Honor, we object to at this point  
11:02:00 9 cumulative. Are we going to go through every page that  
11:02:03 10 Mr. Brasfield said was out or in?

11:02:05 11 MR. NOLAND: I can do it in a summary question.

11:02:07 12 THE COURT: Okay.

11:02:07 13 BY MR. NOLAND:

11:02:07 14 Q. Mr. Murray, is it your understanding that all these  
11:02:09 15 administrative documents Mr. Brasfield's contending in that  
11:02:13 16 table are missing investigatory material?

11:02:16 17 A. Yes.

11:02:16 18 Q. Are these administrative documents, these blank pages,  
11:02:19 19 these civil subpoenas years after the fact, court attendance  
11:02:23 20 sheets, are these -- is this investigative material in any  
11:02:27 21 way?

11:02:27 22 A. Not in my opinion.

11:02:29 23 Q. Mr. Murray, I want to ask you some questions about the 94  
11:02:50 24 percent figure to clarify some things.

11:02:54 25 So?

11:02:55 1 MR. LOEVY: Your Honor, we objected to the 94  
11:02:57 2 percent.

11:02:58 3 THE COURT: Okay. I am going to wait until I hear a  
11:03:00 4 question.

11:03:01 5 BY MR. NOLAND:

11:03:03 6 Q. You were asked just on counsel's questions about how that  
11:03:07 7 figure was arrived at. Do you remember those questions?

11:03:09 8 A. Yes.

11:03:09 9 Q. And in your report, you identified in each one of these  
11:03:19 10 pages how many pages in total are in the 43 investigative  
11:03:24 11 files; is that right?

11:03:25 12 A. Correct.

11:03:25 13 Q. So for each one of the files you list the number of pages?

11:03:28 14 A. That's correct.

11:03:29 15 Q. And you totaled those autopsy and the total amount of  
11:03:32 16 those pages was 9,480 is that right?

11:03:35 17 A. That sounds right, yes /STKPWR-FRPBLTS.

11:03:37 18 Q.

11:03:37 19 MR. LOEVY: Your Honor, we do object Rule 26 for the  
11:03:42 20 reasons discussed at sidebar.

11:03:44 21 THE COURT: I think it's covered in the cross, so I  
11:03:45 22 am going to permit it.

11:03:46 23 BY MR. NOLAND:

11:03:47 24 Q. So that's the starting figure that you started with for  
11:03:50 25 this analysis, right?

11:03:51 1 A. Correct.

11:03:51 2 Q. And then Mr. Murray, the stack of papers you have in front  
11:03:58 3 of you with the pages that after all the identifications by  
11:04:03 4 plaintiff of missing pages which is defendants' 392, the stack  
11:04:09 5 in front of you, defense 394, the last Bates number on it is  
11:04:18 6 what?

11:04:18 7 A. 40928.

11:04:24 8 Q. And the total number is 572?

11:04:28 9 A. Yes, the group exhibit total number is 572.

11:04:32 10 Q. So the documents that we have been talking about that were  
11:04:36 11 unable to be located in the prosecutor's files is 572 is that  
11:04:40 12 right?

11:04:40 13 A. That's correct.

11:04:41 14 Q. And the plaintiff has never made any contention that these  
11:04:53 15 document from here to the top of the 43 files to 392, they  
11:04:59 16 have never made any contention that any of those documents  
11:05:01 17 were missing from any of the files is that right?

11:05:03 18 A. That's correct.

11:05:03 19 Q. Mr. Murray, 9,480 minus 572 equals 8,908. ; is that right?

11:05:22 20 A. Yes.

11:05:23 21 Q. You want to come down and check my math, feel free.

11:05:26 22 A. I'll take your word for it, counsel.

11:05:29 23 Q. You did that before you hit the stand yesterday?

11:05:33 24 A. Yes.

11:05:33 25 Q. And Mr. Murray, 8,?

11:05:36 1 MR. LOEVY: Same disclosure objection, your Honor.

11:05:38 2 THE COURT: You asked this on cross, Mr. Loevy. The  
11:05:41 3 objection is overruled.

11:05:42 4 BY MR. NOLAND:

11:05:42 5 Q. 8908 divided by 9,480 equals 93.9 percent; is that  
11:05:54 6 correct?

11:05:54 7 A. That's correct.

11:05:55 8 Q. And is that the 94 percent figure's talking about?

11:05:58 9 A. It is.

11:05:58 10 Q. But in the end, Mr. Murray, is this supposed to be a  
11:06:06 11 numbers game?

11:06:07 12 A. No, we're trying to look for missing investigative  
11:06:13 13 material.

11:06:13 14 Q. And is it the information or is it a blank piece of paper  
11:06:18 15 that we're concerned about in the criminal discovery process?

11:06:21 16 A. No, we're concerned about investigative material, not  
11:06:26 17 blank pages or items like that.

11:06:31 18 Q. Counsel asked you yesterday, we did not ask you to study  
11:06:38 19 the file in this case is that right?

11:06:40 20 A. That's correct.

11:06:40 21 Q. We asked you -- you were advised that that working file  
11:06:46 22 had not been tendered to Mr. Fields' counsel, right?

11:06:49 23 A. Yes.

11:06:50 24 Q. And you would agree that the information should have been  
11:06:54 25 tendered; is that right?

11:06:55 1 A. Yes.

11:06:55 2 Q. So we asked you to take a look at the 59 files that they  
11:06:59 3 identified to see whether or not there were any problems with  
11:07:02 4 any of those other cases; is that right?

11:07:04 5 A. That is correct.

11:07:04 6 Q. And what is your opinion after -- and we obtained 43 of  
11:07:10 7 those 59 files from the state's attorney's office; is that  
11:07:10 8 right?

11:07:14 9 A. That's correct.

11:07:15 10 Q. And those are the files right in front of you right now?

11:07:17 11 A. That's correct.

11:07:18 12 Q. And what is your opinion about whether or not you found  
11:07:20 13 any problems with respect to the production of material in  
11:07:24 14 those 43 cases?

11:07:25 15 A. I didn't find any problems with the production of the  
11:07:28 16 material. The high majority of the pages even at this late  
11:07:33 17 date were accounted for.

11:07:34 18 Q. And you and I went through yesterday in pretty significant  
11:07:40 19 detail the pages that were left over; is that right?

11:07:44 20 A. Yes.

11:07:44 21 Q. And?

11:07:45 22 MR. LOEVY: Same objection, if it happened yesterday,  
11:07:47 23 your Honor.

11:07:50 24 MR. NOLAND: I'm responding to counsel.

11:07:52 25 THE COURT: It's just a preliminary question. Go

11:07:53 1 ahead.

11:07:53 2 BY MR. NOLAND:

11:07:54 3 Q. You were asked questions yesterday suggesting that we had

11:07:57 4 not showed every single piece of paper in this stack to the

11:08:01 5 jury. Do you remember those questions?

11:08:02 6 A. I do.

11:08:02 7 Q. But Mr. Murray, we had -- you had grouped these pages

11:08:10 8 together in order to system /AOT /KHRAOE explain to the jury

11:08:14 9 what they are?

11:08:15 10 A. That's correct.

11:08:15 11 MR. LOEVY: Objection, leading.

11:08:16 12 THE COURT: Overruled.

11:08:17 13 BY MR. NOLAND:

11:08:17 14 Q. So, for instance, we showed the jury the investigative

11:08:24 15 file control form, do you remember that?

11:08:25 16 A. I do.

11:08:26 17 Q. And you grouped together 22 of these pages, the same kind

11:08:29 18 of page, right?

11:08:31 19 A. Same type of page from different cases.

11:08:33 20 Q. So how many -- we showed the jury one of these 22 pages?

11:08:36 21 A. That's correct.

11:08:37 22 Q. We didn't go through them all?

11:08:39 23 A. We didn't go through all 22 of them, no.

11:08:41 24 Q. Same thing with the daily mainly /EUPBLS dent log. We

11:08:44 25 showed the jury an example of one of the daily major incident

11:08:48 1 logs?

11:08:49 2 A. That's correct.

11:08:49 3 Q. And there were 42 pages of those?

11:08:52 4 A. That's right.

11:08:52 5 Q. Did we show the jury all of those?

11:08:55 6 A. No.

11:08:56 7 Q. I don't not?

11:08:56 8 A. They were different, different information but the

11:08:59 9 formatting and the type of document was the same.

11:09:01 10 Q. And we showed ^ the jury the investigative file inventory

11:09:05 11 form; is that right?

11:09:06 12 A. Yes.

11:09:06 13 Q. And there were 51 of those pages left over; is that right?

11:09:06 14 A. Yes.

11:09:11 15 Q. And we didn't go through every single one of them?

11:09:14 16 A. No, we didn't.

11:09:14 17 Q. Why not?

11:09:15 18 A. The same thing. Those forms are from different cases, the

11:09:20 19 formatting and the type of information included is the same.

11:09:24 20 Q. Would the same answer be given to similar questions for

11:09:27 21 the substantial part of these documents, this stack that we

11:09:31 22 talked about yesterday?

11:09:31 23 A. Yes.

11:09:32 24 Q. And then at the end of the examination yesterday, we

11:09:36 25 talked about the smaller stack of approximately 69 pages that

11:09:44 1 were arguably investigative material, do you remember?

11:09:49 2 MR. LOEVY: Your Honor, this is a redo of the direct.

11:09:52 3 THE COURT: Sustained. Just get to a question that's  
11:09:56 4 responsive. Just a reminder to both sides, you need to be  
11:10:00 5 budgeting your time.

11:10:01 6 BY MR. NOLAND:

11:10:01 7 Q. In sum, you explained the material from the missing -- the  
11:10:07 8 remaining material, the few pages that you considered to be  
11:10:12 9 investigative material that is not in the prosecutor's files  
11:10:16 10 right?

11:10:16 11 MR. LOEVY: Objection.

11:10:16 12 THE COURT: I am going to overrule the objection in  
11:10:18 13 the interest of time.

11:10:19 14 THE WITNESS: And I did.

11:10:23 15 BY MR. NOLAND:

11:10:28 16 Q. Counsel asked you some questions about Mr. Brasfield's  
11:10:31 17 review of permanent retention files. Do you remember those?

11:10:34 18 A. I do remember those questions.

11:10:35 19 Q. And he also used a number with you about 400 and I think  
11:10:43 20 59 investigative files?

11:10:45 21 A. Yes.

11:10:47 22 Q. 457?

11:10:48 23 A. 457 I think it is.

11:10:49 24 Q. Do you know how many investigative files were the  
11:10:52 25 plaintiffs contending didn't have information that they got or



11:10:57 1 they looked at from criminal defense files?

11:10:59 2 A. 59.

11:10:59 3 Q. And were those the 59 files that you were analyzing?

11:11:04 4 A. Yes, they were.

11:11:05 5 Q. Were you analyzing any of the approximately 400 files for  
11:11:11 6 which the plaintiffs had not obtained a criminal defense file  
11:11:13 7 to make any comparison?

11:11:14 8 A. I didn't examine those files.

11:11:16 9 Q. And we didn't request those 400 or so files?

11:11:19 10 A. No.

11:11:19 11 Q. It was they who chose that 59 files to put in play in this  
11:11:23 12 case?

11:11:23 13 A. That's correct.

11:11:23 14 Q. Counsel asked you questions about some of the pages we  
11:11:32 15 went through yesterday with just the name of an individual on  
11:11:36 16 a handwritten note. Do you remember those?

11:11:37 17 A. Yes.

11:11:37 18 Q. And did you look through the state's attorney's files, the  
11:11:44 19 information in the state's attorney's files and available for  
11:11:46 20 those names when there was just a name?

11:11:48 21 MR. LOEVY: Your Honor, objection, covered on direct,  
11:11:50 22 your Honor.

11:11:51 23 THE COURT: Sustained.

11:11:51 24 BY MR. NOLAND:

11:11:58 25 Q. Do you remember counsel showed you the stipulation, a

11:12:04 1 stipulation yesterday, a one paragraph of it, it talked about  
11:12:07 2 the Donnell Johnson case?

11:12:10 3 A. I recall that, yes.

11:12:11 4 Q. And that was the one case in which there was a printing  
11:12:14 5 error at the state's attorney's office for one of these files?

11:12:16 6 A. That's correct.

11:12:19 7 MR. LOEVY: Objection, one case, your Honor.

11:12:20 8 THE COURT: Rephrase the question. A case.

11:12:25 9 Otherwise, it's argumentative.

11:12:26 10 BY MR. NOLAND:

11:12:26 11 Q. Are you aware of any other case in which there was a  
11:12:28 12 printing error at the state's attorney's office?

11:12:30 13 A. No.

11:12:30 14 Q. And in fact, the stipulation reads, Mr. Loevy read you --

11:12:41 15 MR. NOLAND: Your Honor, could I have the ELM0,  
11:12:43 16 employees?

11:12:43 17 THE COURT: Yes. Witness only, not the jury. There  
11:12:48 18 you go.

11:12:48 19 BY MR. NOLAND:

11:12:54 20 Q. Mr. Loevy read you the paragraph 24 about the state's  
11:12:58 21 attorney's office didn't know exactly who was the clerical  
11:13:00 22 employee who printed the file out, right?

11:13:02 23 A. Right.

11:13:02 24 Q. The very next paragraph, paragraph 25 that wasn't showed  
11:13:06 25 to you reads as follows after discovery of this printing

11:13:09 1 error, the cc SAO in the meantime all disks with documents in  
11:13:12 2 all files that the cc SAO produced. The cc SAO checked and  
11:13:19 3 confirmed that there are no other disks in the cc SAO files  
11:13:23 4 with documents with the area central basement files on them;  
11:13:29 5 is that correct?

11:13:29 6 A. That's correct.

11:13:29 7 Q. That's what they stipulated, the plaintiffs and defendant  
11:13:35 8 estimated to?

11:13:35 9 A. That's my understanding.

11:13:37 10 Q. Did you rely on any of those documents in your analysis in  
11:13:39 11 this case?

11:13:40 12 A. No, I analyzed it as they were not found.

11:13:42 13 Q. And, again, turning to the stipulation with respect to the  
11:13:48 14 Donnell Johnson case, it reads, with respect to that case,  
11:13:54 15 Mr. Murray does not claim in his report that the pages with  
11:13:57 16 the area central basement Bates stamped printed from the disk  
11:14:00 17 in the d-o-n-n-e-l-l-Johnson file were in the prosecution  
11:14:04 18 files at any relevant time, right?

11:14:06 19 A. That's correct.

11:14:06 20 Q. Counsel also asked you about whether or not -- whether or  
11:14:16 21 not the files, the state's files that were compared with the  
11:14:20 22 43 files were the trial files. Do you remember that?

11:14:22 23 A. Yes.

11:14:23 24 Q. And there were questions that there were two, only two  
11:14:26 25 files with post conviction materials in them?

11:14:29 1 A. That's correct.

11:14:29 2 Q. Mr. Murray, can you explain to the jury what the --

11:14:34 3 MR. LOEVY: Your Honor, it doesn't say. It says at  
11:14:35 4 least two. Inaccurate statement.

11:14:40 5 THE COURT: Just proceed ahead.

11:14:41 6 BY MR. NOLAND:

11:14:42 7 Q. How many post conviction -- how many of these 43 files  
11:14:46 8 were there post conviction materials?

11:14:47 9 A. Maybe two. I was examining the state's attorney's  
11:14:55 10 office's trial file and that is different than the post  
11:14:58 11 conviction file.

11:15:00 12 Q. Explain how the difference between a trial file and a post  
11:15:04 13 conviction file and why the post conviction materials wouldn't  
11:15:07 14 have the times of documents that you were reviewing?

11:15:09 15 A. ^ trial documents are the type of files we would be  
11:15:14 16 discussing during my testimony where the prosecutor is trying  
11:15:17 17 to obtain the investigative material, the typed up  
11:15:22 18 supplementary reports, /RAERPs, lab sheets, rap sheets, all  
11:15:28 19 that type of stuff in order to prepare for trial. A post  
11:15:31 20 conviction file is something that happens after someone has  
11:15:34 21 been convicted, maybe even years later where they're seeking  
11:15:38 22 to have their conviction overturned. That type of file is  
11:15:41 23 primarily legal documents, like file by someone seeking to  
11:15:45 24 have their conviction overturned, maybe a reply legal document  
11:15:50 25 from the prosecutor, there may be some documents that are

11:15:52 1 added to it, maybe a transcript is relevant from the trial for  
11:15:55 2 that type of proceeding. It is not trial file from the  
11:15:59 3 nature. It doesn't include any of the police reports unless  
11:16:01 4 there's a report that's at issue and that file is maintained  
11:16:05 5 separately from the trial file.

11:16:06 6 Q. Counsel asked you some questions yesterday about how much  
11:16:12 7 time you spent on the case. Do you remember those?

11:16:14 8 A. Yes.

11:16:14 9 Q. And you spent I think as of now about 413 or now that  
11:16:19 10 you've testified for a couple hours, maybe 416, 417 hours?

11:16:23 11 A. Yes.

11:16:23 12 Q. And do you remember how much time you spent up to your  
11:16:27 13 deposition?

11:16:28 14 A. Up to the deposition?

11:16:30 15 Q. Yes. At the time of the deposition through the  
11:16:32 16 deposition.

11:16:32 17 A. I think it was approximately 330.

11:16:34 18 Q. Do you recall how long Mr. Brasfield said he spent up  
11:16:39 19 through the time of his deposition after his review of the  
11:16:45 20 chart and all the analysis that he has in his lengthy report?

11:16:48 21 MR. LOEVY: Objection, your Honor.

11:16:49 22 THE COURT: Sustained.

11:16:49 23 BY MR. NOLAND:

11:16:51 24 Q. Mr. Murray, could you have done a professional and  
11:16:53 25 thorough analysis in this case if you had only spent 60 hours?

11:16:56 1 A. No.

11:16:57 2 Q. Why not?

11:16:57 3 A. Examining the documents that were missing from the  
11:17:02 4 prosecutor's file to determine their relevance to the case  
11:17:06 5 takes far more time than that.

11:17:14 6 MR. NOLAND: Your Honor, may I have the ELMO with the  
11:17:16 7 jury? These are documents that are in evidence.

11:17:20 8 THE COURT: Okay.

11:17:21 9 BY MR. NOLAND:

11:17:23 10 Q. Talking about the Cecil Robinson subpoena. Do you  
11:17:27 11 remember questions yesterday about this memo that counsel  
11:17:30 12 suggested a subpoena was sent for the Cecil Robinson  
11:17:35 13 investigative file and this message was sent in return from  
11:17:39 14 area three. Do you remember that?

11:17:40 15 A. Yes.

11:17:41 16 Q. Can you explain to the jury what happened with respect to  
11:17:43 17 the Cecil Robinson subpoena and this document in front of you?

11:17:46 18 A. The Cecil Robinson murder did not happen in area three.  
11:17:52 19 It happened in area 4 as the police areas were designated at  
11:17:58 20 that time, and it was like a six year gap between the crime  
11:18:03 21 happening and it being solved. So when the request was sent  
11:18:07 22 out to gather the material, it was sent to the wrong area,  
11:18:10 23 area three was the wrong area. So this letter reflects they  
11:18:16 24 searched for documents not knowing whether the case was theirs  
11:18:20 25 or not and they didn't find any documents there.

11:18:22 1 Q. Would that be expected because they didn't investigate the  
11:18:24 2 case?

11:18:24 3 A. Because, yeah, the file would not have been stored there  
11:18:29 4 initially or at any time actually.

11:18:31 5 Q. Mr. Murray, I'm showing you a document from the state's  
11:18:36 6 attorney's file in the case on the Cecil Robinson case. You  
11:18:39 7 reviewed this; is that right?

11:18:41 8 A. Yes.

11:18:41 9 Q. And you also reviewed that file, the Cecil Robinson state  
11:18:47 10 file and investigative file, right?

11:18:49 11 A. Yes.

11:18:49 12 Q. And was there evidence you found that in fact the  
11:18:52 13 investigative in the Cecil Robinson case had been provided to  
11:18:56 14 the prosecutors?

11:18:56 15 A. Yes.

11:18:56 16 Q. What is this document indicate, Mr. Murray, with respect  
11:19:01 17 to the Cecil Robinson case?

11:19:03 18 A. These are documents that the prosecutors ordered and then  
11:19:06 19 if they had received them.

11:19:08 20 Q. And so under the ordered section, it shows that the street  
11:19:12 21 file was ordered by the prosecutors on May 17th. It looks  
11:19:16 22 like 1987; is that right?

11:19:17 23 A. Yes.

11:19:17 24 Q. And then under the received column?

11:19:20 25 A. Or 89, maybe.

11:19:22 1 Q. Or 89. Under the received column it shows that the  
11:19:25 2 prosecutors received the street file on June 16th, 1989?

11:19:29 3 A. Yes.

11:19:36 4 MR. NOLAND: May I have a moment, your Honor?

11:19:40 5 (Brief pause.)

11:20:06 6 MR. NOLAND: No further questions, your Honor.

11:20:07 7 THE COURT: We are going to take a break here for ten  
11:20:09 8 minutes. I will take the jury out and be right back.

11:20:48 9 (The jury leaves the courtroom.).

11:20:48 10 THE COURT: Mr. Kulwin, is there going to be  
11:20:50 11 anything.

11:20:51 12 MR. KULWIN: No.

11:20:52 13 THE COURT: No. Mr. Loevy, before you do the cross  
11:20:55 14 or recross, if there is going to be recross, how long is it  
11:20:58 15 going to be?

11:20:58 16 MR. LOEVY: Ten minutes.

11:20:59 17 THE COURT: Look, I am telling everybody. You guys  
11:21:02 18 aren't budgeting your time. You're all I think operating on  
11:21:05 19 the assumption that you are going to get more time than I  
11:21:08 20 already have given you extra. Don't assume that. Don't  
11:21:13 21 assume it.

11:21:14 22 MR. LOEVY: 7 and a half minutes.

11:21:15 23 MR. KULWIN: I am not assuming it.

11:21:16 24 THE COURT: Take a 10-minute break.

11:21:19 25 (Short break.)



11:33:06 1 (The jury enters the courtroom.)

11:33:06 2 THE COURT: Everybody can have a seat.

11:33:10 3 Mr. Loevy.

11:33:15 4 - - -

11:33:15 5 ^ WITNAME, RECROSS-EXAMINATION

11:33:15 6 BY MR. LOEVY:

11:33:15 7 BY MR. LOEVY:

11:33:16 8 Q. Mr. Murray, Mr. Noland showed you the part of the

11:33:18 9 stipulation about the disks about the area basement files

11:33:22 10 being cut off at the bottom. Do you remember that?

11:33:24 11 A. Yes.

11:33:25 12 Q. I'm going to show you a cut out here with two pages 0063

11:33:30 13 and Nate Fields 5627. This is an example of a page from that

11:33:37 14 file, the done he will Johnson file where it was supposed to

11:33:41 15 ^ look like the one on the left when the police department

11:33:43 16 provided it to the state's attorney, correct?

11:33:46 17 A. Yes.

11:33:46 18 Q. And then when it got into the state's attorney's file,

11:33:49 19 you'd be able to tell that this came from the 2014 production,

11:33:54 20 not back in the day, right?

11:33:55 21 A. Yes.

11:33:56 22 Q. But when the state's attorney printed it and put it in the

11:34:00 23 file, they somehow enlarged and shrunk and enlarged and shrunk

11:34:04 24 in a way that the marking got disappeared, right?

11:34:07 25 A. Yes.

11:34:08 1 Q. So when you actually looked at the document in the state's  
11:34:11 2 attorney's file, you were no longer able to tell on the face  
11:34:13 3 of it if it got in originally or if it got in in 2014, right?

11:34:18 4 A. On that file, yes.

11:34:19 5 Q. All right. And you are not aware of how many other cases  
11:34:23 6 might have been printed in that manner before the disk error  
11:34:26 7 was caught, correct?

11:34:28 8 A. My understanding no other files were printed that way.

11:34:31 9 Q. But nobody knows, do they?

11:34:33 10 MR. NOLAND: Objection, Judge.

11:34:34 11 THE COURT: Objection to that question is sustained.

11:34:37 12 BY MR. LOEVY:

11:34:38 13 Q. You have no foundation to know how many files were printed  
11:34:41 14 before or after that error -- sorry, before that error was  
11:34:45 15 discovered, correct?

11:34:45 16 A. Well, from the agreement with the state's attorney's  
11:34:48 17 office, I think that was the file.

11:34:49 18 Q. Well, what the agreement was after they caught the error,  
11:34:53 19 they agreed to stop doing it, right?

11:34:56 20 MR. NOLAND: Objection, Judge. Mischaracterized the  
11:34:58 21 stipulation.

11:34:58 22 THE COURT: Sustained.

11:34:59 23 BY MR. LOEVY:

11:35:00 24 Q. There is nothing on the stipulation about did we do this  
11:35:02 25 inadvertently before we discovered the problem, correct?

11:35:07 1 THE COURT: Overruled.

11:35:08 2 THE WITNESS: I think it was just that file.

11:35:10 3 BY MR. LOEVY:

11:35:14 4 Q. You were asked about your 94 percent figure. This is not  
11:35:18 5 a figure that was in your report, correct?

11:35:21 6 A. No.

11:35:22 7 Q. It was not a figure when we had a chance to interview you  
11:35:24 8 at your deposition that you had come to?

11:35:27 9 A. Correct.

11:35:27 10 Q. So I have not gotten any chance to ask you questions about  
11:35:30 11 it, would that be fair?

11:35:32 12 A. Yes.

11:35:32 13 Q. If I understand how you're coming up with this and I'm  
11:35:35 14 trying to understand it, you are excluding categorically all  
11:35:40 15 administrative documents, right? Can we start with a yes, no?

11:35:46 16 A. No.

11:35:46 17 Q. You are only counting documents that you deemed to be  
11:35:48 18 sufficiently investigative value?

11:35:50 19 A. No.

11:35:51 20 Q. All right. Let me try and understand then.

11:35:55 21 This stack here is stuff that's missing, right?

11:35:57 22 A. Yes, that's the same stack I have here, right?

11:35:59 23 Q. All right. And did you put these two stacks with the  
11:36:02 24 stuff you say is not missing and the stuff that is missing,  
11:36:06 25 then the difference is the 6 percent?

11:36:08 1 MR. NOLAND: Objection, Judge, mischaracterizes.

11:36:11 2 THE COURT: It's a question.

11:36:12 3 THE COURT: It's a question, I agree. The objection  
11:36:14 4 is overruled.

11:36:15 5 THE WITNESS: No.

11:36:17 6 BY MR. LOEVY:

11:36:20 7 Q. What's missing and what's not missing is not 6 percent,  
11:36:24 8 the stack to the left and the stack to the right is not 6  
11:36:28 9 percent, right?

11:36:28 10 A. What's still missing is from the total of the  
11:36:34 11 investigative files. I can explain it. Do you want me to  
11:36:41 12 explain it?

11:36:41 13 Q. Please.

11:36:42 14 A. Mr. Brasfield examined 59 files. That's the large stack  
11:36:47 15 right here. And that compared to the criminal defense files  
11:36:52 16 and he alleged a certain amount of pages from missing. So he  
11:36:55 17 had the total universe of those documents to look and compare  
11:36:59 18 and he only alleged a certain amount of documents were  
11:37:02 19 missing.

11:37:02 20 Then I looked at the -- in conjunction with the  
11:37:07 21 lawyers' looked at the prosecutor's files and found that there  
11:37:10 22 were only a certain percentage of documents his missing and  
11:37:14 23 then the analysis after that was to determine whether they  
11:37:17 24 were relevant or whatever. So 94 percent of the investigative  
11:37:20 25 files were accounted for.

11:37:21 1 Q. Because the investigative files contained a lot of the  
11:37:24 2 supp reports, right?  
11:37:26 3 A. Investigative files contained everything from the area.  
11:37:31 4 Q. A the lot of the investigative file is just duplicates of  
11:37:35 5 the regular official documents, right?  
11:37:36 6 A. Incompetent wouldn't say they're duplicates.  
11:37:37 7 Q. There's copies of the police reports in all the  
11:37:40 8 investigative files, right?  
11:37:42 9 A. There's copies in most of them, yes.  
11:37:44 10 Q. So a lot of it in these investigative files is the same  
11:37:48 11 stuff that the criminal defendant already had, right?  
11:37:51 12 A. I don't know. I just -- Mr. Brasfield said this amount of  
11:37:58 13 documents were not found in the criminal defense attorney  
11:38:01 14 files and after he did that, after he compared it to the  
11:38:04 15 police investigative files.  
11:38:05 16 Q. But if there's ten pages that are withheld and those are  
11:38:08 17 the pages with the notes, that could be the most important 6  
11:38:14 18 percent, right?  
11:38:14 19 MR. NOLAND: Objection, incomplete hypothetical.  
11:38:16 20 THE COURT: Sustained. Argumentative.  
11:38:17 21 BY MR. LOEVY:  
11:38:19 22 Q. Mr. Brasfield in fairness to him, all he said was I'm  
11:38:24 23 going to do a rough analysis of the stuff that's in the  
11:38:27 24 basement files and the stuff that's in the criminal defense  
11:38:30 25 files and I am going to tell you what wasn't in it, right?

11:38:33 1 A. Yeah, that's how he started.

11:38:35 2 Q. He didn't take a look at a blank page and give the opinion  
11:38:39 3 that I as a law enforcement officer think this blank page had  
11:38:42 4 investigative value, that was not his opinion, was it?

11:38:45 5 A. That's where he listed it in his chart.

11:38:47 6 Q. All he did was list every page, right?

11:38:49 7 A. Without any qualitative analysis on it, so he -- by fact  
11:38:57 8 he's claiming it's investigative material.

11:39:00 9 Q. If we paid him a hundred thousand dollars, he could have  
11:39:03 10 gone page by page?

11:39:05 11 MR. NOLAND: Objection.

11:39:06 12 THE COURT: Sustained.

11:39:08 13 BY MR. LOEVY:

11:39:09 14 Q. He's saying I got a stack of stuff that's missing, plenty  
11:39:12 15 of it is worthless and some of it is not. That's

11:39:15 16 Mr. Brasfield's opinion, right?

11:39:17 17 A. That's not his opinion.

11:39:18 18 THE COURT: Mr. Loevy, at some point, you are going  
11:39:20 19 to need to save this part for argument.

11:39:23 20 MR. LOEVY: I'm oh done.

11:39:24 21 THE COURT: Is there anything else?

11:39:27 22 - - -

11:39:27 23 BERNARD MURRAY, REDIRECT EXAMINATION

11:39:27 24 BY MR. NOLAND:

11:39:27 25 Q. That Donnell Johnson page that he put up again, did you

11:39:30 1 rely upon that page in any way in your analysis?

11:39:33 2 A. No.

11:39:33 3 Q. Did you rely upon any of the pages from that case that had  
11:39:38 4 been cut off in your analysis?

11:39:39 5 A. No.

11:39:40 6 MR. NOLAND: No further questions.

11:39:41 7 THE COURT: Do any of the jurors have any questions  
11:39:42 8 for the witness? Go ahead and pass them down.

11:40:01 9 (The following proceedings were had at sidebar outside the  
11:40:09 10 hearing of the jury:)

11:40:09 11 THE COURT: ^ I am just going to read this. If you  
11:40:19 12 agree that a chronological log or inventory of files is  
11:40:22 13 administrative, administrative in quotes, and you said the log  
11:40:26 14 that is missing out information with the GPR with the two  
11:40:31 15 different dates noted in the Smith/Hickman was exculpatory,  
11:40:34 16 why did you state a few minutes later administrative dates are  
11:40:39 17 not exculpatory. The objection is sustained. Argumentative.

11:40:41 18 All right. Is it common for documents to be in the  
11:40:45 19 state's attorney's file and then not be there later. If this  
11:40:50 20 happens, why wouldn't they be here 20 years later or 30 years  
11:40:55 21 later for example? What about that?

11:40:57 22 MR. LOEVY: Can I read it? ^ I have no objection  
11:41:05 23 because I don't understand it.

11:41:09 24 THE COURT: Okay.

11:41:14 25 (The following proceedings were had in open court in the

11:41:14 1 presence and hearing of the jury:)

11:41:14 2 THE COURT: So one of the questions I am not going to

11:41:17 3 ask. The other one I am.

11:41:20 4 So in your experience, would it be common for

11:41:28 5 documents to be in the state's attorney's file at one point

11:41:32 6 and then go missing later and not be there later, is that a

11:41:36 7 common thing?

11:41:37 8 THE WITNESS: Not a common thing, but over years.

11:41:41 9 THE COURT: Okay.

11:41:41 10 THE WITNESS: Documents can go missing.

11:41:45 11 THE COURT: Can you give a couple of examples of why

11:41:47 12 that might happen based on your experience of course.

11:41:50 13 THE WITNESS: Based upon my experience, if you're

11:41:52 14 getting ready for trial, you have all the relevant documents

11:41:55 15 you need for trial, and after discovery is all done, you go to

11:41:59 16 trial, you used the documents, now you got to store your

11:42:02 17 state's attorney file in the warehouse. All the documents

11:42:05 18 that you gathered during discovery, you might not have kept in

11:42:09 19 your trial file when you send it to the warehouse. That's one

11:42:12 20 example of how some documents that you went originally might

11:42:15 21 have went missing.

11:42:15 22 THE COURT: Okay. Follow-up based on that?

11:42:20 23 MR. LOEVY: Yes, your Honor.

11:42:21 24 BY MR. LOEVY:

11:42:21 25 Q. The rules require the lawyers to maintain the integrity of



11:42:27 1 the files?

11:42:28 2 A. Yes.

11:42:28 3 Q. And that's something you all took seriously?

11:42:30 4 A. Yes.

11:42:31 5 MR. LOEVY: I have no further questions.

11:42:32 6 MR. NOLAND: No questions.

11:42:33 7 THE COURT: You are excused. Please call the next  
11:42:36 8 witness.

11:42:38 9 MR. BURNS: Your Honor, we call Jeffrey noble.

11:43:59 10 (Witness sworn.)

11:44:07 11 MR. BURNS: May I proceed?

11:44:08 12 THE COURT: Go ahead.

11:44:09 13 MR. BURNS: Thank you.

11:44:10 14 - - -

11:44:10 15 ^ WITNAME, DIRECT EXAMINATION

11:44:11 16 BY MR. NOLAND:

11:44:11 17 BY MR. BURNS:

11:44:11 18 Q. Good morning?

11:44:12 19 A. Good morning, sir.

11:44:13 20 Q. Would you kindly tell the ladies and gentlemen of the jury  
11:44:16 21 your name and for the benefit of the record, spell your last  
11:44:19 22 name?

11:44:19 23 A. Jeff noble, n-o-b-l-e-

11:44:21 24 Q. Mr. Noble, will you tell the ladies and gentlemen of the  
11:44:25 25 jury what your profession or occupation is?

11:44:27 1 A. I am a consultant for police practices.

11:44:30 2 Q. A consultant for police practices. Help us out. What is  
11:44:34 3 police practices?

11:44:35 4 A. I was a police officer for almost 30 years and as a  
11:44:41 5 consultant for police practices, what I do is I consult /W-P  
11:44:45 6 police agencies, sometimes with cities regarding a variety of  
11:44:48 7 issues from internal affairs investigations to disciplinary  
11:44:52 8 issues, use much force pursuits, supervision, policies,  
11:44:59 9 administrative issues with police.

11:45:01 10 Q. As a result of that experience and the work that you do,  
11:45:06 11 are you familiar with police practices throughout the country?

11:45:08 12 A. I am.

11:45:09 13 Q. And furthermore, are you familiar in terms of given your  
11:45:16 14 experience how different /TKEPLTS will deal with subjects such  
11:45:21 15 as working files or investigative files?

11:45:23 16 A. Yes, sir, I am.

11:45:25 17 Q. So you told us you were in law enforcement; is that  
11:45:28 18 correct?

11:45:28 19 A. Yes, sir.

11:45:29 20 Q. Would you tell us a little bit more about your experience  
11:45:31 21 in law enforcement.

11:45:33 22 A. I became a police officer in 1984 in I are vine  
11:45:38 23 California, I are vine is a city that's got a population of  
11:45:42 24 about 15,000, 200 police officers in orange county, south of  
11:45:50 25 Disneyland, just New Port beach. I began there as a police

11:45:56 1 officer, I worked as an officer in patrol for about four  
11:45:59 2 years.  
11:46:00 3 A. In the late '80s, I was assigned to a narcotics unit. I  
11:46:04 4 did narcotics for about four and a half years in an undercover  
11:46:07 5 capacity. /STKPWHR-FRPBLT went back to patrol for a short  
11:46:10 6 period of time, was promoted to sergeant. As a sergeant, I  
11:46:14 7 supervised ^ pat ^ Pat ROM unit, then I was assigned to a  
11:46:17 8 variety of positions. I was a sergeant for about ten years.  
11:46:21 9 I was assigned to emergency management, I was assigned to our  
11:46:25 10 training unit for about two years in our training unit, not  
11:46:31 11 only was I responsible for hiring but training all the current  
11:46:34 12 officers, ensuring that all of our new officers went to the  
11:46:37 13 police academy, that they were getting qualified, but I was  
11:46:40 14 also responsible for the department's policy manual during  
11:46:43 15 that period of time, so I reviewed all of our policies, I  
11:46:46 16 would write policies. If the chief wanted to change policies  
11:46:49 17 or I wanted to make a recommendation for change in policy, I  
11:46:52 18 would do that. I was also as a sergeant in our internal  
11:46:56 19 affairs unit for about four years. I was a swat sergeant for  
11:47:03 20 seven years which is a collateral assignment. I did that in  
11:47:06 21 addition to what I was -- my primary assignment of sergeant.  
11:47:10 22 I was then promoted to lieutenant. As a lieutenant I was a  
11:47:14 23 watch commander in a patrol. I was a lieutenant for about  
11:47:18 24 three months before I was promoted to commander. As a  
11:47:22 25 commander, the city of I are vine is the chief of police, one

11:47:26 1 deputy chief and then three commanders. Each commander was  
11:47:30 2 responsible for about a third of the city, so my area of  
11:47:33 3 responsibility for the eight years that I was a commander was  
11:47:37 4 what we call the university area which is the southern portion  
11:47:40 5 of the city which is if you're familiar with southern  
11:47:43 6 California is the area around Jon Wayne /AEURPBT, university  
11:47:47 7 of California I are vine is within the city of I are vine, it  
11:47:51 8 actually has its own police department but I was the liaison,  
11:47:55 9 and because their police department was small, if I go in  
11:48:00 10 happened, the I are vine police department would take over  
11:48:03 11 because it was technically within our city. /STKPWHR-FRPBLT  
11:48:05 12 and then after being a commander for eight years, I was a dep  
11:48:09 13 /AOUPT chief for the last years of my career.  
11:48:11 14 Q. In your experience, you talked a little bit about  
11:48:14 15 responsibility for reviewing and developing policies; is that  
11:48:17 16 correct?  
11:48:17 17 A. Yes.  
11:48:18 18 Q. Just so it's clear, how long a period of time were you  
11:48:21 19 with the I are vine California police department?  
11:48:24 20 A. I was there for 28 years before I retired.  
11:48:26 21 Q. And part of that experience was the review and drafting of  
11:48:29 22 policies. Did those policies include policies relative to  
11:48:34 23 investigative notes taken during the course of homicides?  
11:48:37 24 A. No, we didn't have a specific policy regarding  
11:48:41 25 investigative notes.

11:48:42 1 Q. You did not?

11:48:42 2 A. No, sir.

11:48:43 3 Q. Okay. We will come back to that.

11:48:46 4 Tell me, if you would, beyond the experience in I are  
11:48:49 5 vine, were you further involvement in law enforcement?

11:48:51 6 A. For about the last 12 years, even while I was still  
11:48:54 7 working with ire vine, I started doing some consulting work  
11:48:59 8 that mostly consisted of doing witness work like I am today,  
11:49:04 9 but also consists of working with police departments directly.  
11:49:08 10 Sometimes I've been hired by cities like the city of San  
11:49:12 11 Francisco and the say of Austin when they would have a mainly  
11:49:18 12 event in their city, in Austin, it was two officer involved  
11:49:23 13 shootings, in San Francisco, it was the indictment of nine  
11:49:26 14 members of their command staff where internal investigations  
11:49:28 15 were conducted and the city's lacked some confidence or had  
11:49:32 16 some concerns regarding those investigations and I was hired  
11:49:34 17 as a consultant to review those investigations to determine  
11:49:37 18 the reasonableness ^ of the investigation that was conducted.

11:49:41 19 I've also been hired as a consultant in cities like  
11:49:44 20 Seattle based on a consent decree and reviewed all their use  
11:49:50 21 of force incidents for a year to look at the reasonableness  
11:49:55 22 and the completeness and thoroughness of their use of force  
11:49:59 23 investigations as they worked with the monitor that was  
11:50:01 24 appointed by the federal court to monitor the city of Seattle.

11:50:05 25 Q. In cases in which you have acted as an expert, you said

11:50:11 1 such as cases as we are here today, correct?

11:50:14 2 A. Yes.

11:50:14 3 Q. And on those cases, are you typically just involved on  
11:50:18 4 behalf of police departments or law enforcement agencies?

11:50:20 5 A. No, I have been retained as an expert witness probably in  
11:50:25 6 excess of 125 times, and pretty even split between plaintiffs,  
11:50:30 7 people suing the police, and police departments, and I've also  
11:50:34 8 been retained in criminal trials where police officers are  
11:50:40 9 being prosecuted and each of those times I was re/TAEUPBLD by  
11:50:44 10 the prosecutor's office to offer opinions where I felt an  
11:50:48 11 officer had done something improperly and they were being  
11:50:51 12 criminally prosecuted.

11:50:52 13 Q. Have you given expert testimony in courts around the  
11:50:55 14 country?

11:50:55 15 A. I have.

11:50:56 16 Q. And that both in federal and state courts?

11:50:58 17 A. It is, yes.

11:50:59 18 Q. Tell us a little bit, if you would, just briefly, about  
11:51:02 19 your educational background in addition to your experience in  
11:51:05 20 law enforcement.

11:51:06 21 A. I have a bachelors degree in criminal justice at Cal tech,  
11:51:14 22 while I was working as a police officer, I went to law school,  
11:51:17 23 a university in I are vine offered a program where you went  
11:51:22 24 part-time. So I went to law school. I graduated, passed the  
11:51:26 25 bar. I am licensed in the State of Illinois as an attorney.

11:51:29 1 I never really practiced law. When I got out of law school, I  
11:51:33 2 worked on a part-time basis as a law firm to see if I liked  
11:51:37 3 it. That was in the early '90s. Since then I haven't  
11:51:40 4 practiced law at all.

11:51:40 5 Q. Tell us a little bit more about your involvement in terms  
11:51:43 6 of police practices. Have you been called upon to give  
11:51:48 7 lectures to various /TKPWAOUPLS or entities relative to  
11:51:52 8 police practices?

11:51:52 9 A. Yes.

11:51:52 10 Q. And where has that been, if you could elaborate?

11:51:54 11 A. Just -- I made presentations for the international  
11:51:59 12 associations of chiefs of police I A.C. P, they do an annual  
11:52:03 13 conference. It's about 10,000 people. I have /TAUBGT  
11:52:10 14 conferences there three or four times. I have taught for the  
11:52:15 15 department of the federal Department of Justice through cops  
11:52:19 16 office, I have been retained by the Mexican government to go  
11:52:23 17 to Mexico to teach the state and federal police about how to  
11:52:27 18 conduct internal affairs investigations.

11:52:29 19 Q. Have you also contributed to professional literature  
11:52:33 20 within your area of discipline and expertise?

11:52:36 21 A. I have. I drafted and published about 20 articles for  
11:52:40 22 policing magazines, one case in an academy journal, a couple  
11:52:48 23 articles in Atlantic magazine, I published a textbook on  
11:52:52 24 managing accountability for police about how to conduct an  
11:52:57 25 internal affairs investigation, and I published a couple



11:52:59 1 chapters in college level textbooks.

11:53:04 2 Q. As part of your work in dealing with matters such as  
11:53:08 3 you're involved here over the past many years, you said over  
11:53:12 4 the past 10 to 12 years; is that correct?

11:53:14 5 A. Yes.

11:53:14 6 Q. Have you ever been involved in work on behalf of the  
11:53:17 7 Chicago Police Department? I don't want to get into the  
11:53:19 8 specifics of it, but have you been involved with that work?

11:53:21 9 A. I have.

11:53:22 10 Q. And over what period of time?

11:53:23 11 A. The last 12 years.

11:53:24 12 Q. Are you being compensated for your time here today, your  
11:53:29 13 professional time?

11:53:30 14 A. Yes, I am.

11:53:31 15 Q. And what is your hourly rate of compensation, sir, if you  
11:53:35 16 would share that with us?

11:53:36 17 A. \$295 an hour.

11:53:37 18 Q. Now, if I may, Mr. Noble, I'd like to direct your  
11:53:41 19 attention to approximately June of this year, earlier this  
11:53:44 20 year in June, were you engaged by my firm to become involved  
11:53:48 21 to review certain policies relative to the Chicago Police  
11:53:52 22 Department?

11:53:52 23 A. Yes, sir, I was.

11:53:54 24 Q. And as part of that engagement, were you provided with  
11:53:59 25 certain materials relative to your review?



11:54:01 1 A. Yes, I was.

11:54:02 2 Q. And I don't want to go in -- I know we have your report.

11:54:06 3 I believe there are approximately two pages of material, but

11:54:08 4 could you highlight in essence the materials that were

11:54:11 5 provided to you for the ladies and gentlemen of the jury.

11:54:14 6 A. Sure. I was provided copies of the policies that are at

11:54:18 7 issue in this case. I reviewed deposition testimony and trial

11:54:23 8 testimony from director Hickey, Mr. Brasfield's report,

11:54:29 9 Mr. Brasfield's deposition in this case and some other cases

11:54:34 10 where Mr. Brasfield has testified, I reviewed the depositions

11:54:37 11 of detectives brown and /KOL bee who worked in the subpoena

11:54:41 12 unit. That's generally it.

11:54:46 13 Q. Were you asked to address the issue of the working files

11:54:53 14 or street files as we have heard that terminology before?

11:54:57 15 A. Yes.

11:54:58 16 Q. And beyond that were you also asked about retention of

11:55:00 17 that information, materials that might have been obtained

11:55:04 18 through working or street files?

11:55:05 19 A. Yes, I was.

11:55:06 20 Q. Did you also address the issue of the subpoena unit and

11:55:09 21 how the Chicago Police Department responds to subpoenas in

11:55:13 22 matters in which violent crimes have been charged against

11:55:17 23 individuals and the response by the Chicago Police Department?

11:55:19 24 A. Yes.

11:55:19 25 Q. So let's begin then, if we may.

11:55:23 1 I'd like to direct your attention --

11:55:27 2 MR. BURNS: Your Honor, is the computer?

11:55:29 3 BY MR. BURNS:

11:55:30 4 Q. To Defendant's Exhibit No. 54. Are you able to see that,

11:55:42 5 sir?

11:55:42 6 A. Yes.

11:55:42 7 Q. And this is a detective division special order number

11:55:48 8 83-1. Do you see that?

11:55:49 9 A. Yes.

11:55:49 10 Q. And are you familiar with that based on your review in

11:55:52 11 this case?

11:55:53 12 A. Yes, I am.

11:55:54 13 Q. And when in fact was that issued?

11:55:56 14 A. February 3, 1983.

11:55:59 15 Q. February -- that's the effective date?

11:56:02 16 A. Yes.

11:56:02 17 Q. And immediately to the left it specifies the date that the

11:56:05 18 order was issued; is that correct?

11:56:07 19 A. Yes, that's January 13, 1983.

11:56:09 20 Q. And that special order was issued by the chief of

11:56:15 21 detectives is that also correct?

11:56:17 22 A. Yes, sir.

11:56:17 23 Q. And that is at the time was a will yam has been heart?

11:56:25 24 A. Yes, sir.

11:56:25 25 Q. What was the subject of '83-1 ^ ?

11:56:28 1 A. This was a policy that was written to direct officers to  
11:56:32 2 maintain their investigative notes.

11:56:35 3 Q. So the subject matter was the investigative notes; is that  
11:56:37 4 correct?

11:56:37 5 A. Yes.

11:56:38 6 Q. Investigative notes, is that all part and parcel of a  
11:56:43 7 working file?

11:56:45 8 A. Well, the /KHEUPLD has three separate -- essentially three  
11:56:51 9 separate filings systems and they go by different names, so  
11:56:54 10 they have a permanent retention file, which contains the  
11:56:57 11 original case report and supplemental reports, those formal  
11:57:02 12 reports, they have an investigative file which would contain  
11:57:05 13 what this policy is talking about which are the investigative  
11:57:09 14 notes, to/from memorandums, notes that are taken by  
11:57:13 15 detectives, and then they have this third thing called a  
11:57:15 16 working file. A working file is nothing more than copies of  
11:57:19 17 documents that may be in one of those first two permanent  
11:57:21 18 files, and the purpose of a working file is so a detective  
11:57:26 19 doesn't have to go to records every time or go to a building  
11:57:29 20 that you want to refresh your memory about something, about  
11:57:32 21 what somebody said or did or what another detective did who  
11:57:36 22 may have taken some notes or wrote a report, it's just copies  
11:57:39 23 of a file that you would keep with you at your desk or in your  
11:57:43 24 car as you're out conducting your investigation.

11:57:46 25 Q. So investigative notes that are prepared during the course

11:57:51 1 of an investigation are typically part of a working file; is  
11:57:57 2 that correct?

11:57:57 3 MR. LOEVY: Objection. Leading, your Honor.

11:57:58 4 THE WITNESS: Well, it could be --

11:58:00 5 THE COURT: When you hear an objection, stop. The  
11:58:02 6 objection is sustained.

11:58:04 7 BY MR. BURNS:

11:58:05 8 Q. Let's go back. Working file, you've told us that working  
11:58:08 9 files have also been referred to as street files?

11:58:12 10 A. Yes, they are.

11:58:12 11 Q. All right. Subject of '83-1 is the working or street  
11:58:18 12 file; am I correct?

11:58:18 13 A. Well, it's both the working and street file and the  
11:58:24 14 investigative file.

11:58:26 15 Q. So we have heard to explain for the ladies and gentlemen  
11:58:29 16 of the jury something about a murder book. Do you remember  
11:58:31 17 that terminology? Have you heard that before in your  
11:58:34 18 professional experience?

11:58:34 19 A. I'm familiar with murder books.

11:58:36 20 Q. And would you explain to the ladies and gentlemen of the  
11:58:39 21 jury what a murder book is?

11:58:41 22 A. Well, when the investigators are, you know, particularly  
11:58:44 23 conducting murder and honestly side investigations they will  
11:58:47 24 form what's called a murder book, it's nothing more than a  
11:58:51 25 working file that is copies of all the reports and copies of

11:58:55 1 all the investigative notes and, again, that's /KOEPLS of  
11:59:00 2 these files, it's a working file or a murder book that's kept  
11:59:03 3 at your desk to help the detective as they're going through  
11:59:07 4 and conducting their investigation.

11:59:09 5 Q. In this case, with regard to working files, let's talk  
11:59:11 6 about notes, specifically notes that homicide detectives would  
11:59:16 7 be taking during the course of investigation. All right?

11:59:20 8 According to 831, what should happen to those notes  
11:59:26 9 that detectives would be taking during the course of a  
11:59:29 10 homicide investigation?

11:59:30 11 A. All their notes must be retained and placed as part of the  
11:59:35 12 investigative file.

11:59:36 13 Q. Now, are you familiar with the accepted police practices  
11:59:42 14 relative throughout this country, relative to investigative  
11:59:46 15 notes that are obtained by detectives in the course of  
11:59:49 16 investigations?

11:59:50 17 A. Yes.

11:59:50 18 Q. And how are those investigative notes handled according to  
11:59:57 19 the accepted police practices?

11:59:58 20 A. Generally accepted police practices, if you take notes on  
12:00:02 21 an investigation, you'll use those notes to write your formal  
12:00:06 22 report, the formal report will be maintained and your note  
12:00:09 23 will be destroyed.

12:00:10 24 Q. And the notes are destroyed?

12:00:11 25 A. Yes, sir.

12:00:12 1 Q. And how does Chicago then differ with that concept?

12:00:14 2 A. They require that those notes are maintained.

12:00:17 3 Q. So by maintaining them, does it help you form an opinion

12:00:22 4 as to the special order or policy of the Chicago Police

12:00:26 5 Department with regard to notes, homicide detective notes

12:00:31 6 taken during the course of their investigation?

12:00:34 7 A. Yes, their policy is above and beyond what other agencies

12:00:37 8 across the country require.

12:00:38 9 Q. All right. So in the course of this investigation, you've

12:00:54 10 told us what you have done relative to these notes. In terms

12:01:01 11 of reviewing your understanding, what does this policy intend

12:01:07 12 to accomplish, what is its purpose as you understood it and

12:01:10 13 set forth in the policy itself and I'm going to refer you if I

12:01:16 14 may page 1, purpose, if you see that before you?

12:01:18 15 A. Yes.

12:01:18 16 Q. And what does it say if you look to at least paragraph A.

12:01:27 17 Would you share that with the ladies and gentlemen of the

12:01:28 18 jury.

12:01:29 19 A. Sure. The purpose is specifically written that these

12:01:32 20 guidelines are for the proper retention of official department

12:01:36 21 reports, notes, memoranda, and miscellaneous documents of

12:01:39 22 potential evidentiary value /KHRAOUP Lated during the course

12:01:43 23 of a particular violent crime field investigation.

12:01:45 24 Q. And if we would then drop down to the policy itself. Do

12:01:52 25 you see that? Is that stated on there as well, sir?

12:01:54 1 A. Yes, it is.

12:01:55 2 Q. And it's labeled Roman numeral number 3, policy; am I  
12:02:00 3 correct?

12:02:00 4 A. Yes.

12:02:00 5 Q. If we could highlight that then, it begins on this page  
12:02:04 6 and carries over to the next?

12:02:05 7 A. Yes.

12:02:06 8 Q. Would you share that then with the ladies and gentlemen of  
12:02:09 9 the jury.

12:02:09 10 A. Sure. It's the policy of the Chicago Police Department to  
12:02:12 11 conduct all criminal investigations in an impartial and  
12:02:15 12 objective manner and to maintain the integrity of this  
12:02:19 13 investigative files to ensure that due process rights of the  
12:02:24 14 accused are not compromised during the subject investigation,  
12:02:28 15 initial court hearing or any subsequent reviews.

12:02:33 16 Additionally, it is the policy of the Chicago Police  
12:02:36 17 Department to record and preserve any relevant information  
12:02:39 18 maintained by any detective during the course of a violent  
12:02:43 19 crime field investigation.

12:02:44 20 Q. Does it go onto set forth what the policy is in /TERPBLIS  
12:02:48 21 terms of what it's trying to keep for the benefit of future  
12:02:53 22 review?

12:02:53 23 A. Yes, sir, it does.

12:02:54 24 Q. Would you share that with the ladies and gentlemen of the  
12:02:57 25 jury, would you continue to read what that policy states.



12:02:59 1 A. Sure. When assigned to violent crime field  
12:03:04 2 investigations, detectives will preserve and record  
12:03:06 3 information and materials obtained in the course of the  
12:03:09 4 investigation to assure not only that information and  
12:03:12 5 materials indicating the possible guilt are preserved but also  
12:03:17 6 that any information and materials that may tend to show his  
12:03:20 7 possible innocence or aid in his defense is preserved  
12:03:26 8 deviation from this policy adversely impacts the goals and  
12:03:29 9 objectives of the Chicago Police Department and may result in  
12:03:32 10 disciplinary action against that department member.  
12:03:34 11 Q. So if I understand the objective at the end is to keep  
12:03:42 12 everything is that true?  
12:03:43 13 A. Yes, sir.  
12:03:43 14 Q. Now, this policy when it was implemented in 1983, was  
12:03:50 15 there training relative to that policy as you understand it  
12:03:54 16 based upon your review of this case?  
12:03:56 17 A. Yes.  
12:03:56 18 Q. And would you share with the ladies and gentlemen of the  
12:03:59 19 jury your understanding of the training that was provided to  
12:04:02 20 the detectives who would be impacted by this policy?  
12:04:04 21 A. It's my understanding that director Hickey directed  
12:04:11 22 training classes for every detective that lasted as I recall  
12:04:14 23 three or four hours regarding this specific policy.  
12:04:17 24 Q. And the specific policy again is to keep all notes  
12:04:21 25 relative and other records relative to homicide



12:04:23 1 investigations; is that correct?

12:04:24 2 A. Yes, that's correct.

12:04:26 3 Q. Does the policy or any subsequent policies to this -- a  
12:04:41 4 special order, is it fair to call that a policy?

12:04:43 5 A. Yes.

12:04:43 6 Q. Does this policy or any subsequent policies address the  
12:04:47 7 issue of review to ensure compliance?

12:04:50 8 A. Well, every policy that's written as part of a police  
12:04:56 9 manual requires some level of review, so every policy that's  
12:04:59 10 enacted supervisors are responsible to conduct reviews and be  
12:05:04 11 sure that employees are following the policies. Specifically,  
12:05:07 12 in another version of this policy that came out in 1986, there  
12:05:11 13 was a provision that was specifically added that mandated the  
12:05:18 14 exempt members, so people who are in management staff, would  
12:05:22 15 conduct periodic unscheduled inspections to ensure that this  
12:05:27 16 policy is being followed.

12:05:27 17 Q. And was that also anticipated in the earlier policies that  
12:05:33 18 the supervisors would be reviewing to ensure compliance?

12:05:35 19 A. Right. Again, as I said before, every policy within a  
12:05:39 20 police department's policy manual, supervisors are responsible  
12:05:42 21 to ensure compliance.

12:05:43 22 Q. Now, you talked a little bit about the training that  
12:05:47 23 director assistant director Hickey was involved with when the  
12:05:50 24 policy was developed and implemented, correct? You just told  
12:05:53 25 us about that?

12:05:54 1 A. Yes, sir.

12:05:54 2 Q. Is there also, as you understand it, training foremen and  
12:05:59 3 women of the Chicago Police Department /STKPHR-FRPBLT who  
12:06:00 4 would be prom /OEPTed and assigned to the detective division?

12:06:03 5 A. Yes, it's my understanding that when you become a  
12:06:07 6 detective, you're required to attend a course, I can't recall  
12:06:11 7 if it was a week or two weeks long, about how to be a  
12:06:14 8 detective and these policies would be covered during that  
12:06:18 9 course.

12:06:18 10 Q. Are there also -- is there also discussion based upon your  
12:06:23 11 review in this case of GPRs?

12:06:26 12 A. Yes, sir.

12:06:27 13 Q. And what is a GPR, as you understand it?

12:06:29 14 A. Well, a GPR, it stands for GPR records and it's really  
12:06:34 15 nothing more than a form ^ to take notes on.

12:06:37 16 Q. So that form was intended, though, for the police  
12:06:47 17 department, members of the detective division to actually  
12:06:50 18 /WROEU their notes on a form that says general progress  
12:06:52 19 report?

12:06:53 20 A. Yes, that's what it's intended for.

12:06:56 21 Q. And if someone were to obtained handwritten notes, should  
12:07:00 22 they disregard those if they are not written on a general  
12:07:02 23 progress report or how is that handled?

12:07:05 24 A. No, the goal of the policy is to maintained your notes.  
12:07:09 25 If the detectives out in the field and they don't happen to

12:07:11 1 have this form with them, we certainly wouldn't want to  
12:07:14 2 discourage them from taking notes, so they would take notes  
12:07:17 3 whether they used a note pad or a napkin, whatever was  
12:07:20 4 convenient, whatever they wrote their notes on, they would be  
12:07:23 5 required to maintain that document.  
12:07:24 6 Q. Now, you told us that you compared this policy and its  
12:07:29 7 progeny, this special order, and compared it, tried to compare  
12:07:35 8 it with other /TKEPLTS throughout the United States, true?  
12:07:37 9 A. I tried to, yes.  
12:07:38 10 Q. And you said no one seems to have it but Chicago?  
12:07:41 11 A. I didn't say that, but that's true, nobody -- I did try to  
12:07:47 12 compare it.  
12:07:48 13 MR. LOEVY: Your Honor, objection, if he didn't say  
12:07:50 14 it, then he shouldn't say it now.  
12:07:52 15 THE COURT: He was just talking about his own answer.  
12:07:54 16 MR. LOEVY: I apologize.  
12:07:55 17 MR. BURNS: .  
12:07:56 18 THE ATTORNEY:  
12:07:56 19 Q. Would you please complete your answer, sir?  
12:07:58 20 A. I tried to find a comparison, so this was a policy I had  
12:08:02 21 not seen before. Obviously, this is my field, I study this a  
12:08:07 22 lot, I attend seminars, I read journals, I read articles, I  
12:08:11 23 had not seen a policy that mandated this, so I started  
12:08:18 24 checking. Many police departments today have their policy  
12:08:20 25 manuals available on line. Los Angeles police department,

12:08:25 1 Seattle, Austin, I checked those agencies. I have worked on  
12:08:29 2 cases in cities like New York and Miami, you know, cities all  
12:08:33 3 over the country, Georgia, Tennessee, Memphis. And I've never  
12:08:38 4 seen such a policy. So I looked in Mr. Brasfield's report to  
12:08:42 5 see whether he gave some indication of an individual policy.  
12:08:46 6 Q. Was there any help by looking at that report Mr. Brasfield  
12:08:50 7 authored?  
12:08:51 8 A. No, no, not at all. He didn't offer any specific examples  
12:08:56 9 of any policies similar to this anywhere. In fact, what he  
12:09:01 10 said he worked for the Seattle police department, Fort  
12:09:07 11 Lauderdale for the sheriff's department in Washington state  
12:09:09 12 and in Fort Lauderdale, he was the policy maker, chief of  
12:09:14 13 police of the sheriff. He didn't have those policies there.  
12:09:16 14 Q. Let me ask you then relative to that. You told us the  
12:09:19 15 policy goes above and beyond what are expected by nationally  
12:09:22 16 accepted police practices, true?  
12:09:24 17 A. Yes.  
12:09:24 18 Q. What about the policy provisions relative to the audit, in  
12:09:30 19 other words, the review of the compliance by the officers or  
12:09:35 20 administrators within the Chicago Police Department?  
12:09:36 21 A. Well, obviously, if nobody else has a policy, nobody else  
12:09:41 22 will have a policy to audit a policy they don't have.  
12:09:44 23 Q. Okay. If I may, I'd like to change subjects just for a  
12:09:49 24 moment.  
12:09:49 25 We talked about the subpoena unit of the Chicago

12:09:53 1 Police Department and you have reviewed this matter relative  
12:09:55 2 to that unit; is that correct?  
12:09:56 3 A. Yes, sir.  
12:09:57 4 Q. Tell us first of all, what's your understanding of the  
12:10:02 5 subpoena unit of the Chicago Police Department in terms of how  
12:10:05 6 it is staffed?  
12:10:06 7 A. My understanding is that it is led by a police sergeant,  
12:10:11 8 that there's one officer, and I believe there are five  
12:10:14 9 civilian members of the staff.  
12:10:16 10 Q. So there is a supervisor sergeant?  
12:10:20 11 A. Yes.  
12:10:20 12 Q. Is there any other police personnel other than civilian  
12:10:24 13 staff assigned to that unit?  
12:10:25 14 A. One officer.  
12:10:26 15 Q. So you have a sergeant, a police officer and civilian  
12:10:29 16 staff?  
12:10:29 17 A. Yes, sir.  
12:10:30 18 Q. Is civilian staff acceptable within police practices in  
12:10:36 19 terms of staffing a subpoena unit?  
12:10:38 20 A. Oh, absolutely. You know, different /TKEPLTS do things  
12:10:44 21 differently. Our goal in policing is to put officers out in  
12:10:48 22 the street. They are police officers. This is an  
12:10:49 23 administrative task. I can tell you in California in I are  
12:10:53 24 vine where I was an officer, our record divisions were always  
12:10:56 25 staffed completely including the supervisors by civilian

12:10:59 1 staff.

12:10:59 2 Q. So what is the benefit to having police personnel, a  
12:11:03 3 sergeant or a patrol officer assigned to that division?

12:11:06 4 A. Well, I think in some cases it could offer some additional  
12:11:09 5 oversight, some different additional knowledge and experience,  
12:11:14 6 if somebody has a question, but it certainly could be done  
12:11:16 7 /WOIPT that.

12:11:17 8 Q. What about training, is there a formal training protocol  
12:11:23 9 for civilian personnel who work in subpoena units?

12:11:25 10 A. No, as you can imagine, because every police department  
12:11:29 11 their records management systems are setup a little bit  
12:11:32 12 differently, all those would be trained to be conducted in  
12:11:37 13 house. It would be on-the-job training.

12:11:38 14 Q. There's been some criticism in this matter that there is a  
12:11:42 15 parallel system of record keeping in the Chicago Police  
12:11:45 16 Department rather than a centralized system of record keeping.  
12:11:48 17 Are you aware of those?

12:11:49 18 A. Yes.

12:11:49 19 Q. And what is your opinion relative to the process by which  
12:11:53 20 Chicago maintains its homicide investigation reports?

12:11:57 21 A. I think their system is reasonable and promote. I mean,  
12:12:04 22 if different organizations setup systems differently. There  
12:12:08 23 is no one set of rules that requires ^ many agencies maintain  
12:12:14 24 records in different places, they'll have laboratory reports  
12:12:17 25 in one place, photographs, fingerprints, so it's not uncommon

12:12:22 1 in policing to have multiple records systems.

12:12:25 2 Q. Does the system that the Chicago Police Department have  
12:12:28 3 hinder its ability to respond to subpoenas?

12:12:31 4 A. No.

12:12:32 5 Q. Would you explain to the ladies and gentlemen of the jury  
12:12:35 6 why you believe that?

12:12:35 7 A. Well, this is their system. They're training their  
12:12:40 8 people, their in-house people on how to receive subpoenas and  
12:12:42 9 how to respond to them, so they're comfortable with their own  
12:12:45 10 system and they're certainly capable and able to complete that  
12:12:50 11 task.

12:12:50 12 Q. How is it that the Chicago Police Department responds to a  
12:12:53 13 subpoena it's received by the subpoena unit of the department  
12:12:57 14 to a subpoena? What do they do with it as it pertains to  
12:13:01 15 homicide investigations?

12:13:02 16 A. My understanding is that all subpoenas are initially  
12:13:05 17 /SEPBLT to the superintendent's office and then they are sent  
12:13:08 18 down to the one would be sent to the records bureau for that  
12:13:14 19 permanent file and then a copy of the subpoena would be sent  
12:13:18 20 to the individual district or area where these investigative  
12:13:22 21 files are maintained.

12:13:24 22 Q. And once they are sent out, the requests are made to these  
12:13:29 23 other areas, what happens with that information?

12:13:31 24 A. Well, the subpoena unit would go out and make copies of  
12:13:35 25 the files and respond to the subpoena.



12:13:37 1 Q. And do you make /KOEPLS of everything or what portion of  
12:13:41 2 the files then are copied?

12:13:42 3 A. No, they make copies of everything.

12:13:44 4 Q. And then the response?

12:13:45 5 MR. LOEVY: Objection to foundation, your Honor.

12:13:47 6 THE COURT: Lay the foundation.

12:13:52 7 BY MR. BURNS:

12:13:53 8 Q. In the course of your review of this case, you have  
12:13:55 9 reviewed you told us depositions and policies of the Chicago  
12:13:59 10 Police Department; is that correct?

12:13:59 11 A. Yes.

12:14:00 12 Q. And have you reviewed information relative to the Chicago  
12:14:04 13 Police Department and how it responds to subpoenas in this  
12:14:06 14 case?

12:14:07 15 A. Yes.

12:14:07 16 Q. And are you basing your testimony here on that  
12:14:10 17 information?

12:14:11 18 A. Yes, specifically on the depositions of detective /KOL bee  
12:14:15 19 and brown.

12:14:15 20 THE COURT: All right. The objection is overruled.

12:14:17 21 MR. BURNS: .

12:14:18 22 THE ATTORNEY:

12:14:18 23 Q. So pa point, what happens then when information is being  
12:14:23 24 requested to a subpoena, the subpoena is sent to the  
12:14:25 25 respective, whether it be the records division or sent over to



12:14:29 1 the area where the homicide occurred, what happens with that  
12:14:32 2 information?

12:14:33 3 A. They make a copy of a file and they send a copy onto  
12:14:37 4 whoever has requested the subpoena.

12:14:38 5 Q. And then with that information, when it's received, is it  
12:14:41 6 returned to the subpoena unit?

12:14:43 7 A. Yes.

12:14:43 8 Q. And what does the subpoena unit then do with that?

12:14:46 9 A. They send the copies onto the court or whoever sent the  
12:14:50 10 subpoena.

12:14:51 11 Q. Thank you.

12:14:52 12 MR. BURNS: May I just have one moment, Judge?

12:15:01 13 (Brief pause.)

12:15:18 14 MR. BURNS: Thank you, Mr. Noble. No further  
12:15:21 15 questions at this time.

12:15:21 16 THE COURT: Mr. Kulwin, any questions.

12:15:39 17 MR. KULWIN: Just a couple quick ones, Judge.

12:15:43 18 - - -

12:15:43 19 JEFFREY NOBLE, CROSS-EXAMINATION

12:15:45 20 BY MR. LOEVY:

12:15:45 21 BY MR. KULWIN:

12:15:45 22 Q. Mr. Noble, in your opinion as a policy and police procedures  
12:15:50 23 expert, are detectives who are investigating a serious felony  
12:15:54 24 always required to take notes when they're interviewing  
12:15:56 25 witnesses?

12:15:56 1 MR. LOEVY: Objection to Rule 26, your Honor.

12:15:58 2 THE COURT: Sustained. Unless you can show me at  
12:16:00 3 sidebar.

12:16:12 4 MR. KULWIN: May I have a moment?

12:16:13 5 THE COURT: Yes.

12:16:14 6 (Brief pause.)

12:16:26 7 MR. LOEVY: We will withdraw the objection.

12:16:27 8 THE COURT: Mr. Kulwin, go ahead. The objection has  
12:16:29 9 been withdrawn. Go ahead.

12:16:31 10 BY MR. KULWIN:

12:16:34 11 Q. Do you recall the question, sir?

12:16:35 12 THE COURT: Why don't you put it again.

12:16:37 13 BY MR. KULWIN:

12:16:38 14 Q. Are detectives always required to take notes in your  
12:16:40 15 opinion when they're investigating a homicide?

12:16:43 16 A. No, they are not required.

12:16:44 17 Q. Okay. Are there circumstances in which you could  
12:16:50 18 ascertain that that would not be done?

12:16:51 19 A. Yeah, there are certain times. I mean, some detectives --  
12:16:56 20 I wouldn't, you know, as a practice do it, but some detectives  
12:16:59 21 have very good memories and they practice taking notes and  
12:17:04 22 other times detectives feel like if they break out a note pad  
12:17:08 23 in front of a witness, it may impede the witness from giving a  
12:17:12 24 statement, particularly if you're in a -- for example, like if  
12:17:16 25 you're in a gang neighborhood and the person doesn't want

12:17:18 1 other people if you're out in public and doesn't want other  
12:17:21 2 people to see that you're actually giving information to the  
12:17:24 3 police that are writing it down.

12:17:26 4 Q. Is it acceptable practice for a detective to interview  
12:17:29 5 somebody and then put the information they obtained directly  
12:17:31 6 into a typewritten supplemental report or police report, is  
12:17:34 7 that acceptable?

12:17:35 8 MR. LOEVY: Objection, Rule 26, your Honor.

12:17:36 9 THE WITNESS: Sure.

12:17:37 10 THE COURT: Sustained.

12:17:39 11 MR. KULWIN: I have nothing further, Judge.

12:17:42 12 THE COURT: Mr. Loevy.

12:17:44 13 - - -

12:17:44 14 ^ WITNAME, CROSS-EXAMINATION

12:17:44 15 BY MR. LOEVY:

12:17:44 16 BY MR. LOEVY:

12:17:47 17 Q. Mr. Noble, you have worked for the City of Chicago before,  
12:17:50 18 correct?

12:17:50 19 A. Yes, sir.

12:17:51 20 Q. In fact, tell the jury between 2012 and 2016 how much the  
12:17:57 21 City of Chicago has paid you in connection with being a  
12:18:00 22 consultant expert witness in court cases?

12:18:02 23 A. Oh, I have probably done at least 12 cases between 2012  
12:18:07 24 and 2016.

12:18:08 25 Q. The question was how much money, sir?

12:18:10 1 A. Sir, I don't know.

12:18:11 2 Q. More than \$200,000?

12:18:12 3 A. Probably close to that, yes.

12:18:14 4 Q. Does \$222,000 sound right?

12:18:17 5 A. Probably somewhere around that, yes.

12:18:19 6 Q. In fact, prior to 2011, there was another \$50,000,

12:18:23 7 correct?

12:18:23 8 A. I can't recall, but I certainly had cases prior to that,

12:18:29 9 yes.

12:18:30 10 Q. With this case you're going to get pretty close to

12:18:33 11 \$300,000, aren't you, when you add up prior to with 2011 plus

12:18:37 12 the 2012 and 2012 and 2016 and this case it's going to be

12:18:42 13 about \$300,000?

12:18:46 14 A. Yes, sir.

12:18:47 15 Q. Is that a substantial portion of your income?

12:18:49 16 A. My fees were less in the earlier years, but today it's

12:18:54 17 two-thirds or three quarters of my income.

12:18:56 18 Q. Is that a big chunk of it coming from the City of Chicago?

12:18:59 19 A. It's certainly a percentage. I had about 125 cases and

12:19:03 20 about 17 with Chicago.

12:19:05 21 Q. All right. You spent about two and a half hours drafting

12:19:09 22 your report in this case, correct?

12:19:10 23 A. I would have to have my billing statements in front of me,

12:19:16 24 but that's probably true.

12:19:17 25 Q. How much is your total bill going to come to for your

12:19:20 1 opinions in this case?

12:19:21 2 A. I think I billed about \$15,000 up until coming here.

12:19:25 3 Q. So it's going to be about how much total?

12:19:26 4 A. Probably another 6 or \$7,000 between travel time and

12:19:31 5 testifying.

12:19:31 6 Q. So you're going to be over 20,000 for the opinions today?

12:19:35 7 A. Yes, sir.

12:19:35 8 Q. You didn't review any of the files, did you?

12:19:37 9 A. No, I did not.

12:19:38 10 Q. So basically drawing on your experience and your

12:19:41 11 knowledge, right?

12:19:42 12 A. Yes, sir.

12:19:42 13 Q. All right. As you've mentioned, you've been hired by the

12:19:47 14 City of Chicago quite a bit, correct?

12:19:48 15 A. Yes, sir.

12:19:48 16 Q. Most recently in 2016 the man /STKPWHRAER /RA case?

12:19:53 17 A. Yes.

12:19:53 18 Q. You were asked to give an opinion about the reasonableness

12:19:56 19 of their investigative, investigations and disciplinary

12:19:58 20 procedures, right?

12:19:59 21 A. Yes.

12:19:59 22 Q. In your opinion was that they're great, right?

12:20:03 23 A. They were reasonable, yes.

12:20:04 24 Q. And then in the Kluppelberg case also in year, you were

12:20:10 25 asked to give opinions about street files?

12:20:13 1 A. Yes.

12:20:13 2 Q. And your opinion was Chicago's policies were great?

12:20:16 3 A. Same as in this case.

12:20:17 4 Q. In the /RAO\*UB, another wrongful conviction case, your

12:20:21 5 opinion was the City of Chicago's policies were great?

12:20:24 6 A. /THERPB reasonable.

12:20:25 7 Q. In Coleman, intern affairs and discipline, you were asked

12:20:32 8 to give an opinion about the city's policies?

12:20:34 9 A. Yes.

12:20:34 10 Q. What was your opinion?

12:20:35 11 A. They were reasonable.

12:20:36 12 Q. How about low /TEZ, use of force case, different subject,

12:20:39 13 does the city have excellent policies on that?

12:20:42 14 A. As I recall, that case was about the policies were about

12:20:47 15 internal affairs than this one, but, yes, they're reasonable.

12:20:52 16 Q. How about the /TKPWAOEULS case, officer involved

12:20:56 17 shootings?

12:20:56 18 MR. KULWIN: Judge, I am going to object.

12:20:58 19 THE COURT: Overruled.

12:20:59 20 BY MR. LOEVY:

12:20:59 21 Q. City of Chicago's policies and practices regarding officer

12:21:02 22 involved shootings, are those all above average too?

12:21:06 23 A. They were reasonable.

12:21:07 24 Q. Above average or reasonable?

12:21:08 25 A. Basically, when I give an opinion about policies, I make a

12:21:12 1 determination whether they're reasonable and appropriate and  
12:21:16 2 not above average. I don't have a way of assessing above  
12:21:19 3 average.

12:21:19 4 Q. Are you saying the same thing here today with regard to  
12:21:22 5 these policies that they're acceptable, not better or worse,  
12:21:26 6 just acceptable in your case?

12:21:28 7 A. I think in this case, nobody else has these policies, so  
12:21:32 8 they're above.

12:21:32 9 Q. How about in the fury case in 2013, internal affairs  
12:21:36 10 investigations, was the Chicago's poll seals above in that  
12:21:39 11 too?

12:21:39 12 THE COURT: You're running up against Rule 403 at  
12:21:42 13 this point.

12:21:42 14 BY MR. LOEVY:

12:21:43 15 Q. All right. How many times have you on different subjects  
12:21:45 16 given opinions that the City of Chicago's policies, you have  
12:21:51 17 told juries in cases that the City of Chicago's policies are  
12:21:55 18 what they should be?

12:21:56 19 A. I think in /TPHAERPL -- I'm certain in every case that I  
12:22:00 20 have been involved with the City of Chicago where I have  
12:22:02 21 reviewed the particular policy, I found it to be reasonable.

12:22:05 22 Q. 17 times, right?

12:22:06 23 A. Yes, sir.

12:22:06 24 Q. And you said nearly, but you do mean every time you've  
12:22:10 25 looked at the city's policies, you found them to be good,

12:22:14 1 right?

12:22:15 2 A. I found them to be reasonable. For those policies that  
12:22:17 3 were involved in a particular case.

12:22:20 4 Q. All right. You are a lawyer as well, correct?

12:22:21 5 A. Yes.

12:22:22 6 Q. You said that the Chicago's requirement about the  
12:22:30 7 /TKPW-RPLS was a unique type solution?

12:22:34 8 A. Yes.

12:22:35 9 Q. Chicago at that time had a unique type problem didn't it?

12:22:38 10 A. There was litigation from my understanding at that time,  
12:22:40 11 yes.

12:22:40 12 Q. Chicago had a problem that was unique, wasn't it?

12:22:45 13 A. Yes, they had litigation.

12:22:46 14 Q. And the uniqueness of the problem was there was an  
12:22:51 15 ingrained practice at the Chicago Police Department to not  
12:22:54 16 turn over their notes to the criminal justice system, correct?

12:22:58 17 A. No, I don't know what the problem was. All I know is  
12:23:01 18 there was litigation.

12:23:02 19 Q. You have no idea what the litigation was?

12:23:03 20 A. No.

12:23:04 21 Q. You spent \$20,000 was how many hours of work?

12:23:10 22 MR. BURNS: Objection, your Honor. Argumentative.

12:23:11 23 THE COURT: That's not argumentative. Overruled.

12:23:13 24 THE WITNESS: I don't know. I would have -- it's

12:23:16 25 295. I'd have to do on my math. Probably about 20 hours.



12:23:20 1 BY MR. LOEVY:

12:23:20 2 Q. But in none of the work that you did did you review the  
12:23:23 3 Jones problem and the City of Chicago's problems?

12:23:24 4 MR. BURNS: Objection, your Honor.

12:23:25 5 THE COURT: Sustained. You have covered the  
12:23:28 6 /POEUPBLT.

12:23:28 7 BY MR. LOEVY:

12:23:28 8 Q. All right. Would it change your opinions if you knew that  
12:23:31 9 the reason Chicago enacted this GPR solution is because they  
12:23:35 10 were having a real problem with detectives not wanting to  
12:23:37 11 disclose their work product investigation files?

12:23:40 12 A. No.

12:23:41 13 Q. All right. Did you know as you sit in that chair that the  
12:23:46 14 Jones case involved an /EPB trenched and cultural problem at  
12:23:53 15 the /KHEUPLD not turning over investigative material?

12:23:56 16 MR. BURNS: Objection.

12:23:56 17 THE COURT: The objection is sustained. He testified  
12:24:03 18 he didn't know about those cases.

12:24:04 19 BY MR. LOEVY:

12:24:04 20 Q. The GPR says detectives have to take notes on a form?

12:24:08 21 A. Yes.

12:24:08 22 Q. Do you have any knowledge either way as to whether they  
12:24:10 23 actually follow that policy, that requirement?

12:24:12 24 A. No, I did not conduct any review.

12:24:14 25 Q. All right. Even leaving aside your review, do you have

12:24:17 1 any knowledge either way whether that was just words on the  
12:24:20 2 book or whether they actually did it?  
12:24:21 3 A. The only knowledge I have is director Hickey testifying he  
12:24:25 4 had like 140,000 copies of that form. That's it.  
12:24:29 5 Q. All right. If 82 percent of the files that were at issue  
12:24:33 6 in this case contained unofficial handwritten notes not on  
12:24:37 7 GPRs, that would be a problem for the policy, would it not?  
12:24:40 8 A. Not the intent of the policy. As I testified was that the  
12:24:46 9 goal of the policy was to maintain the notes, whether it was  
12:24:49 10 on that particular form or another format, I don't think it  
12:24:52 11 matters.  
12:24:52 12 Q. Doesn't the policy explicitly require that GPR forms are  
12:24:57 13 supposed to be used? That's a yes, no question.  
12:24:59 14 A. Yes.  
12:25:00 15 Q. All right. So if the policy on the books explicitly  
12:25:04 16 requires that the GPR form be used, why doesn't it bother you  
12:25:07 17 that in practice in '82 percent of the files, they didn't  
12:25:11 18 adhere to the policy on the books?  
12:25:13 19 MR. BURNS: Objection. Form of the question.  
12:25:15 20 THE COURT: Overruled.  
12:25:16 21 THE WITNESS: For two reasons. First, you know, the  
12:25:19 22 goal of the policy is about maintaining these notes and as  
12:25:25 23 being engaged in police practices, I recognize as a police  
12:25:28 24 officer you don't always have a form with you. Second,  
12:25:31 25 director Hickey testified that he felt had that that was

12:25:34 1 promote and that's the training they do.

12:25:36 2 BY MR. LOEVY:

12:25:36 3 Q. In I are vine when you guys had policies on the books,  
12:25:39 4 were the police officers required to follow them?

12:25:41 5 A. Of course.

12:25:41 6 Q. Were there any examples of widespread disregard of the  
12:25:46 7 official policies in I are vine?

12:25:47 8 MR. BURNS: Objection, argumentative, relevance.

12:25:50 9 THE COURT: Sustained. Argumentative.

12:25:53 10 BY MR. LOEVY:

12:25:54 11 Q. It doesn't do any good to enact a written policy in the  
12:25:58 12 detectives aren't going to follow it, would you agree with  
12:26:00 13 that?

12:26:00 14 A. No, I think the policy corresponds with training and  
12:26:04 15 supervision and there's a combination.

12:26:06 16 Q. Would you agree with me that a department can have a  
12:26:08 17 culture where if they enact rules and then everybody just  
12:26:11 18 ignores them that the problems could be exacerbated, would you  
12:26:16 19 agree with that?

12:26:16 20 MR. BURNS: Objection, your Honor.

12:26:17 21 THE COURT: Overruled.

12:26:18 22 THE WITNESS: Certainly if you create rules and  
12:26:21 23 nobody follows any of the rules, yeah, that would be a  
12:26:24 24 problem.

12:26:24 25 BY MR. LOEVY:

12:26:24 1 Q. That makes it worse than if you don't have rules at all,  
12:26:27 2 doesn't it?  
12:26:28 3 A. It would certainly be a problem, yes.  
12:26:30 4 Q. Now, you said that requiring notes to be maintained you  
12:26:36 5 thought was a good step, right?  
12:26:37 6 A. Sure.  
12:26:38 7 Q. All right. But it's actually worse to a regime where you  
12:26:42 8 require notes to be maintained but you don't put them into  
12:26:46 9 official supp reports, that's A. Okay? Are you with me on my  
12:26:51 10 A? I'll give you a hypothetical A. You require the  
12:26:54 11 detectives to maintain their notes, but they don't put them  
12:26:58 12 into the official police reports. Okay. Do you understand A?  
12:27:01 13 A. I understand.  
12:27:01 14 Q. And B, you let detectives destroy your notes, their notes,  
12:27:05 15 but you require them to record the information into official  
12:27:09 16 supp reports. Do you understand the difference?  
12:27:10 17 A. Yes.  
12:27:11 18 Q. B is actually a better system, isn't it?  
12:27:13 19 A. I don't believe you can compare it as better system. In B  
12:27:20 20 you're taking notes and you're taking those notes and  
12:27:23 21 incorporating them into your report and that's what's a  
12:27:27 22 generally accepted police practice. In A, you're taking notes  
12:27:29 23 and for whatever reason some of those notes don't get  
12:27:35 24 incorporated into a report, you still maintain the notes so  
12:27:39 25 the notes are accessible, so they're there. It's like a

12:27:43 1 report. It's similar.

12:27:43 2 Q. Notes being there is not a way to get the information to a  
12:27:47 3 criminal defendant, correct?

12:27:48 4 A. Well, in this case, they are, because.

12:27:51 5 Q. In which case?

12:27:52 6 A. Here, by these policies they are because they're being  
12:27:57 7 maintained and the subpoena unit is required to produce them.

12:27:59 8 Q. All right. So if the system worked in perfection, then  
12:28:03 9 every note would get handed over to a subpoena, right?

12:28:06 10 A. Absolutely, that's the purpose.

12:28:08 11 Q. You have no knowledge as to whether or not there were  
12:28:12 12 notes in those investigative files that were found in the  
12:28:15 13 basement that weren't getting handed over to subpoenas?

12:28:18 14 MR. BURNS: Objection, form of the question,  
12:28:20 15 foundation.

12:28:21 16 THE COURT: Overruled. It's just a question whether  
12:28:23 17 he has any knowledge.

12:28:25 18 THE WITNESS: I have no knowledge.

12:28:26 19 MR. LOEVY: Your Honor, this would be a change  
12:28:31 20 topics. Could we break for lunch?

12:28:32 21 THE COURT: No.

12:28:34 22 MR. LOEVY: No.

12:28:34 23 THE COURT: Do the other five minutes.

12:28:36 24 BY MR. LOEVY:

12:28:36 25 Q. Let's take a look at the other policy in here. This is

12:28:39 1 83-2.

12:28:42 2 MR. LOEVY: Could we have the ELM0, please, your

12:28:46 3 Honor.

12:28:47 4 BY MR. LOEVY:

12:28:48 5 Q. The policy that you thought was good says D, investigative

12:28:55 6 file inventory sheet. Do you see that?

12:28:57 7 A. Yes.

12:28:57 8 Q. We all the inventory sheet, that's the sheet that lists

12:29:01 9 the reports?

12:29:02 10 A. Yes.

12:29:02 11 Q. And it says, I'm going to turn your attention to page 4,

12:29:07 12 6. Whenever a subpoena or discovery motion is received in any

12:29:10 13 case, two copies of the investigative file inventory sheet

12:29:14 14 will be forwarded to the office of legal affairs of the

12:29:16 15 department in the case of a subpoena or to the criminal

12:29:20 16 division of the state's attorney's office in any case of a

12:29:22 17 discovery motion so that one of such copies may be transmitted

12:29:26 18 to the attorney for the defendant. Do you see that?

12:29:28 19 A. Yes.

12:29:28 20 Q. Okay. So the policy on the book required the police

12:29:32 21 department whenever there was a subpoena in a criminal case to

12:29:35 22 turn over the inventory, right?

12:29:36 23 A. The inventory sheet, yes.

12:29:37 24 Q. That's a good idea, right?

12:29:38 25 A. You know, it's more important that the actual documents

12:29:42 1 are there, but, yes.

12:29:43 2 Q. Well, I'm focused on the inventory. It's a good idea that  
12:29:48 3 the inventory gets turned over, right? Sir, how can you  
12:29:53 4 hesitate with that?

12:29:55 5 MR. BURNS: Objection.

12:29:56 6 THE COURT: The objection is overruled.

12:29:57 7 THE WITNESS: The inventory sheet is nothing more  
12:30:00 8 than a listing in the file. What's important is the  
12:30:03 9 documents. The inventory sheet is just a listing of what's in  
12:30:05 10 the file ^ .

12:30:06 11 BY MR. LOEVY:

12:30:06 12 Q. If you're ever going to have a dispute whether the guy got  
12:30:09 13 everything or didn't get everything, wouldn't you want to turn  
12:30:14 14 over the index?

12:30:14 15 A. If the policy requires them to turn over the index, they  
12:30:17 16 should turnover the index.

12:30:19 17 Q. That's a good policy on the books?

12:30:21 18 A. It's certainly reasonable.

12:30:23 19 Q. Do you have any idea whether Chicago followed that policy?

12:30:26 20 A. No.

12:30:26 21 Q. If the city in practice didn't follow the policies that  
12:30:30 22 you said are good policies, would that change your opinion?

12:30:33 23 A. Change my opinion as to what?

12:30:35 24 Q. The opinions you're giving in court today?

12:30:37 25 A. No, my opinions are about the policy, not about whether

12:30:40 1 they followed it.

12:30:43 2 MR. LOEVY: Are we at lunch yet, your Honor?

12:30:45 3 THE COURT: We are. We are going to break for lunch.

12:30:51 4 Don't discuss the case. We will be back at 1:30.

12:31:21 5 (The jury leaves the courtroom.).

12:31:21 6 THE COURT: You understand you can't discuss your

12:31:23 7 testimony with anyone.

12:31:26 8 THE WITNESS: Yes.

12:31:26 9 THE COURT: After this witness, what's upcoming?

12:31:32 10 MR. MICHALIK: After this witness we will have our  
12:31:34 11 third expert Judy Roberts.

12:31:35 12 THE COURT: Roberts, okay. And then after that?

12:31:43 13 MR. MICHALIK: After that we may play a video or  
12:31:48 14 potentially have a reading.

12:31:49 15 THE COURT: Davis and the reading would be Hunter?

12:31:52 16 MR. MICHALIK: Yes.

12:31:52 17 THE COURT: Any other live witnesses this afternoon?

12:31:56 18 MR. KULWIN: I think --

12:32:01 19 MR. MICHALIK: There may be another reading. We have  
12:32:03 20 to work it out with Mr. Art on the Maue.

12:32:06 21 MR. ART: There is a tiny issue on Maue.

12:32:09 22 THE COURT: On Maue. Tell me what the issue is.

12:32:11 23 MR. ART: Maue starts testifying, he gets the  
12:32:13 24 incident wrong, it's on the video, so there's some testimony  
12:32:17 25 testimony testimony testimony then there's a sidebar where the



12:32:19 1 court says, he's not remembering what we're talking about  
12:32:22 2 here.

12:32:22 3 MR. LOEVY: You struck the testimony.

12:32:24 4 MR. ART: And then you struck the prior testimony.  
12:32:26 5 And we say the testimony should be struck.

12:32:32 6 MR. MICHALIK: Actually.

12:32:32 7 THE COURT: Only the /TPAEUPB test of bells.

12:32:35 8 MR. MICHALIK: What happened was on the video he  
12:32:37 9 started to discuss a different incident involving Mr. Fields  
12:32:40 10 and then we had a sidebar and one of the problems was it was  
12:32:45 11 done by video. We have the transcript here.

12:32:47 12 THE COURT: Let me look at it.

12:32:54 13 MR. MICHALIK: This portion being read is the part  
12:32:56 14 that was objected to.

12:32:57 15 THE COURT: So I'm looking at 3428 through 29.

12:33:06 16 MR. MICHALIK: Just to orient your Honor, the  
12:33:09 17 incident in question was May 6th of 1997. But Mr. Fields was  
12:33:14 18 placed into the administrative detention on May 1st of 1997.

12:33:20 19 THE COURT: Say what you just said again.

12:33:21 20 MR. MICHALIK: Okay. The incident.

12:33:24 21 THE COURT: May 6th but he was put -- the date he was  
12:33:27 22 put in sag was 5/1.

12:33:33 23 MR. ART: Right. So if you're looking at 3428 at  
12:33:36 24 line 6, there is a question about when he gets put in and  
12:33:39 25 there is a correct answer to that. We are fine with that.

12:33:43 1 But then down the page, he starts testifying about that  
12:33:45 2 incident and all of that testimony in our view is when he is  
12:33:53 3 confused.

12:33:55 4 THE COURT: What is it you're objecting to 3428, line  
12:34:00 5 19 through 3429 line 25.

12:34:03 6 MR. ART: Correct.

12:34:03 7 THE COURT: Is there a contention that this is the  
12:34:06 8 incident that Mr. Fields testified about on his examination?

12:34:10 9 MR. MICHALIK: Yes, your Honor. If you remember from  
12:34:12 10 the video, there's a portion where the correctional officers,  
12:34:17 11 including Mr. Maue, go to -- go to where Mr. Fields is being  
12:34:22 12 detained and they escort him out of there to the shower. That  
12:34:25 13 is why is being discussed at this point. This is the  
12:34:28 14 beginning of what you see on the video and that's why we  
12:34:31 15 wanted to include it.

12:34:32 16 THE COURT: Wait a second. But at the bottom of  
12:34:35 17 3428, there's a question of whether the tact -- so earlier on  
12:34:42 18 3428, it says he was put into the administrative detention  
12:34:48 19 unit on May 1, 1997. The bottom of 3428 was the tactical unit  
12:34:56 20 activated for the transfer of Mr. Fields to the administrative  
12:34:59 21 detention unit on May 1 and he said yes, explains why. And  
12:35:05 22 then the question on 3429 page 3 asks about the May 6  
12:35:10 23 incident. The May 6 incident, is that the one that Mr. Fields  
12:35:12 24 testified about?

12:35:13 25 MR. ART: That's the one that is on the video, but

12:35:15 1 the problem is if you keep reading, you get to a sidebar and  
12:35:18 2 then on 3434 at 3, the court says this is what I'm going to  
12:35:23 3 do, I am going to strike the matter that we just talked about  
12:35:27 4 because he is confusing the two events. After the sidebar  
12:35:30 5 they ask leading questions about the actual events in question  
12:35:33 6 and our contention is after the court struck the testimony.

12:35:35 7 THE COURT: The question is when I said I struck the  
12:35:40 8 testimony, the question is how far back does this go.

12:35:42 9 MR. ART: Basically our position is when he is  
12:35:45 10 talking about what he thinks is May 6th above the court's  
12:35:49 11 ruling, it isn't.

12:35:51 12 THE COURT: I see what you're saying.

12:35:55 13 THE COURT: And the yellow on here is the stuff  
12:35:57 14 that's designated?

12:35:58 15 MR. ART: Yes.

12:35:59 16 MR. MICHALIK: Yes.

12:36:00 17 THE COURT: So here's the deal. You cut it off after  
12:36:06 18 line 20 on page 3429 because he's clearly present on May the  
12:36:15 19 6th, right? There is no question that he's present.

12:36:17 20 MR. ART: Right.

12:36:17 21 THE COURT: So when from 3429 line 3 to line 20 he's  
12:36:22 22 basically saying he was present on May 6th, this is the  
12:36:25 23 capacity in which I'm present, this is what my duties and  
12:36:27 24 obligations are. 3 -- 3429 lines 21 through 25 he starts to  
12:36:33 25 talk about a particular incident. That may be what's wrong.

12:36:36 1 It's not really necessary because it picks up on 3425. Those  
12:36:43 2 are the five lines to cut out. Any other live witness as soon  
12:36:48 3 as.

12:36:48 4 MR. KULWIN: Mr. Poulos. Once again, Judge,  
12:36:52 5 depending on how things go, Mr. Hogan.

12:36:55 6 MR. LOEVY: That could take us before 4:00 o'clock.  
12:36:59 7 Roberts is a short difficulties.

12:37:00 8 THE COURT: Davis is long.

12:37:02 9 MR. MICHALIK: 25.

12:37:03 10 THE COURT: Hunter is longer or shorter than Davis?

12:37:06 11 MS. KATZ: Longer.

12:37:07 12 MR. LOEVY: Longer.

12:37:08 13 MR. ART: It's a reading.

12:37:09 14 THE COURT: And Maue the parts that you're reading  
12:37:13 15 looks short.

12:37:13 16 MR. MICHALIK: It looks like 20 minutes or so.

12:37:15 17 THE COURT: How long is the direct on Roberts?

12:37:18 18 MR. MICHALIK: 20 minutes to a half an hour. I won't  
12:37:20 19 think it will be all that long.

12:37:22 20 MR. LOEVY: Our cross is shorter.

12:37:24 21 THE COURT: Poulos is how long a direct?

12:37:30 22 MR. KULWIN: 15.

12:37:32 23 MR. NOLAND: 15 minutes, your Honor.

12:37:33 24 MR. LOEVY: We won't think it's that long, but that's  
12:37:36 25 our position.

12:37:36 1 MR. KULWIN: That takes you to about 4:00.

12:37:38 2 THE COURT: What are the issues still on the table on  
12:37:40 3 Mr. Hogan?

12:37:41 4 MR. KULWIN: There's a number of them, Judge.

12:37:43 5 THE COURT: Laundry list.

12:37:44 6 MR. KULWIN: Rule 35, what did he say about the  
12:37:48 7 documents that were taken, what use -- we didn't raise this,  
12:37:56 8 what use I can make of this document, it's not admissible in  
12:37:59 9 evidence but I want to talk to you about that, you know, we  
12:38:02 10 had talked about this Maloney issue and you had ruled a  
12:38:05 11 certain way about it, but I think I was not articulate in what  
12:38:09 12 I wanted --

12:38:11 13 THE COURT: Yeah.

12:38:11 14 MR. KULWIN: I just want to explain it to you before  
12:38:13 15 I get to it because it is different than what you ruled on. I  
12:38:16 16 don't want to go into the whole nine yards, but I can explain  
12:38:19 17 it to you later. That's pretty much it.

12:38:21 18 THE COURT: Okay. Afternoon break.

12:38:23 19 MR. KULWIN: Afternoon break.

12:38:26 20 THE COURT: 1:30.

12:38:28 21 (The trial was adjourned at 12:35 p.m. until 1:30 of this  
12:38:34 22 same day and date.).

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